

# EXHIBIT Q

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3

4 ----- )

5 MIGUEL CALZADA, )

6 Plaintiffs, )

7 vs. ) No.

8 ) CV 11-01701-DMG (JCGx)

9 TIME WARNER CABLE LLC, ) VOLUME I

10 Defendants. )

11 -----)

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15 Videotaped Deposition of MIGUEL CALZADA,

16 taken at 633 West Fifth Street, Suite 1900,

17 Los Angeles, California, commencing at

18 9:40 a.m., Tuesday, November 15, 2011,

19 before Janice Schutzman, CSR No. 9509.

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1 Q. Whose name was the lease under?

2 A. Both of our names.

3 Q. Did you both move in at the same time?

4 A. Yes.

5 Q. Did you subscribe to cable service at 09:47AM  
6 4567 Willis Avenue.

7 A. We did. It was in Ms. Wells-Lipton's name.

8 Q. Which service did you subscribe to?

9 A. Both Internet and cable services.

10 Q. Who was the provider? 09:47AM

11 A. Time Warner Cable.

12 Q. Did Ms. Wells-Lipton remain at 4567 Willis  
13 after February 2011?

14 A. She did.

15 Q. And do you know if she currently lives 09:48AM  
16 there?

17 A. She does.

18 Q. Have you ever been a subscriber to Time  
19 Warner Cable?

20 A. I have, yes. 09:48AM

21 Q. When?

22 A. That would have been when I first moved  
23 into 15128, which would have been 2002 or 2003.

24 Q. When did you cease subscribing to Time  
25 Warner Cable at 15128 Sylvan? 09:48AM

1 A. I don't remember.

2 Q. Can you give me a rough approximation?

3 A. Maybe after a couple years.

4 Q. Why did you stop subscribing to Time Warner  
5 Cable at that time?

09:49AM

6 A. I don't remember.

7 Q. Did you continue to receive cable service  
8 at 15128 Sylvan after you personally stopped  
9 subscribing to Time Warner Cable?

10 A. Yes. Yes. Under my brother's name. That  
11 brother being Jaime.

09:49AM

12 Q. And it's your testimony that you don't  
13 recall why you stopped subscribing to Time Warner  
14 Cable?

15 A. I don't.

09:49AM

16 Q. Do you have a cell phone number?

17 A. No, I don't, not currently.

18 Q. Have you had a cell phone number in the  
19 past?

20 A. Yes. That number was (818) 968-4268.

09:50AM

21 Q. During what time period did you use that  
22 cell phone number?

23 A. Let me see. I believe I canceled the  
24 service sometime in March of this year, and I  
25 believe I've had it for about nine or ten years.

09:51AM

1 Q. And why did you cancel your cell phone  
2 service?

3 A. Oh, I was -- I was and am currently  
4 unemployed.

5 Q. So you canceled for financial reasons? 09:51AM

6 A. Correct.

7 Q. Is there a phone number for the residence  
8 where you currently reside?

9 A. Yes.

10 Q. What's that number? 09:51AM

11 A. (818) 997-3157.

12 Q. Has that been the same residence number  
13 since you moved into 15128 Sylvan Street?

14 A. Yes.

15 Q. Was there a number for the residence at 09:51AM  
16 4567 Willis during the two to three months you lived  
17 there?

18 A. There was not.

19 Q. Have you had your deposition taken before  
20 today? 09:52AM

21 A. No.

22 Q. Have you ever been a party to a lawsuit?

23 A. No.

24 Q. Do you understand that the oath that you've  
25 taken this morning is the same oath that you would 09:52AM

1 Q. Do you know how many units you've  
2 completed?

3 A. Approximately 45.

4 Q. Do you have a major?

5 A. Political science.

09:54AM

6 Q. Are you currently employed?

7 A. No.

8 Q. Who was your last employer?

9 A. The Law Offices of Jack L. Mattingly.

10 Q. How do you spell Mr. Mattingly's last name? 09:54AM

11 A. M-A-T-T-I-N-G-L-Y.

12 Q. How long were you employed there?

13 A. Approximately two years.

14 Q. Can you give me the date range?

15 A. I can't. I don't remember.

09:54AM

16 Q. When were you last employed by

17 Mr. Mattingly's law office?

18 A. I believe in February of this year.

19 Q. Would it be fair to say that you were

20 employed with Mr. Mattingly's law office starting 09:55AM

21 sometime in 2009, if you were employed there for two  
22 years?

23 A. That sounds about right.

24 Q. What was your position there?

25 A. I was a -- I answered phones there.

09:55AM

1 Q. Did you discuss the deposition with anyone  
2 other than the three gentlemen at the meeting  
3 yesterday?

4 A. No.

5 Q. Prior to yesterday's meeting, what  
6 documents, if any, had you reviewed with respect to  
7 your role in this case?

10:02AM

8 A. I was given the special interrogatories,  
9 and I was told to answer those.

10 MR. GREIFINGER: So again, don't reveal  
11 conversations between you and your attorneys. Be  
12 very careful about that.

10:03AM

13 THE WITNESS: Okay.

14 BY MR. MERRYMAN:

15 Q. Do you recall when that took place?

10:03AM

16 A. I may have received them about two months  
17 ago.

18 Q. Have you reviewed any other documents at  
19 any time with respect to this case?

20 A. No.

10:03AM

21 Q. Prior to yesterday, had you reviewed the  
22 code section that you referred to earlier in your  
23 testimony today?

24 A. Prior to yesterday, no.

25 Q. Prior -- strike that.

10:03AM

1 Other than reviewing interrogatories a  
2 couple of months ago and your meeting yesterday,  
3 have you reviewed any documents with respect to this  
4 case at any time?

5 A. I may have looked for -- I looked for phone 10:04AM  
6 records to see if I could pinpoint the date of the  
7 conversation.

8 Q. Were you able to locate any phone records?

9 A. No. No, I wasn't.

10 Q. Other than the documents you reviewed 10:05AM  
11 yesterday and the interrogatories that you testified  
12 you reviewed approximately two months ago, at any  
13 time have you reviewed any documents with respect to  
14 this case?

15 A. No. 10:05AM

16 Q. Who is responsible for paying the Time  
17 Warner Cable bill currently?

18 A. My brother Jaime.

19 Q. Do you know for what length of time Jaime  
20 has been responsible for paying the Time Warner 10:06AM  
21 Cable bill?

22 A. Since I stopped working.

23 Q. So Jaime has been responsible for paying  
24 the Time Warner Cable bill since approximately  
25 February of 2011? 10:07AM



1 recorded.

2 Q. At the time you first spoke to Mr. Lipton  
3 about this issue, how many conversations had you had  
4 with Time Warner Cable?

5 A. With a Time Warner Cable employee, maybe 10:20AM  
6 about 10 or 15 throughout the course of having cable  
7 and Internet services.

8 Q. Is it your testimony that you'd had  
9 approximately 10 to 15 conversations with Time  
10 Warner Cable through May of 2009 or through today? 10:20AM

11 A. Through -- I'm not exactly sure how many  
12 conversations I've had, but roughly.

13 Q. Is that through May of 2009 or through  
14 today?

15 A. Through today. 10:21AM

16 Q. You can't tell me exactly how many  
17 conversations you've had with Time Warner Cable at  
18 any time through today; correct?

19 A. No.

20 Q. Let me ask the question again. 10:21AM

21 You can't tell me exactly how many  
22 conversations you've had with Time Warner Cable at  
23 any time through today; is that correct?

24 A. That's correct, I don't have an exact  
25 number. 10:21AM

1 Q. As you sit here today, how many calls with  
2 Time Warner Cable can you recall?

3 MR. GREIFINGER: Objection, vague.

4 You can answer.

5 THE WITNESS: Oh, okay. 10:22AM

6 I remember the two in question. I remember  
7 the initial -- I remember first ordering it,  
8 vaguely, but aside from that, I don't really recall  
9 any specific ones.

10 BY MR. MERRYMAN: 10:22AM

11 Q. When you say you remember first ordering  
12 "it," are you talking about when you first ordered  
13 cable services from Time Warner Cable back in 2002  
14 or 2003?

15 A. That's correct. 10:23AM

16 Q. When you first ordered cable service in  
17 2002 or 2003, did you speak with a Time Warner  
18 customer service representative?

19 A. I believe so, yes.

20 Q. Do you recall one way or the other, prior 10:23AM  
21 to speaking with that customer service  
22 representative, whether you received notice that  
23 your call may be monitored or recorded?

24 A. I don't.

25 Q. When you refer to the two calls in 10:23AM

1 question, what calls are you referring to?

2 A. A call in February of 2010 and a call in  
3 May of 2009, I believe.

4 Q. With respect to any calls during which  
5 you've spoken to a Time Warner customer service 10:24AM  
6 representative, other than the three calls you've  
7 identified which are the one when you first ordered  
8 service and the calls in May 2009 and February 2010,  
9 do you recall one way or the other whether prior to  
10 speaking with a customer service representative you 10:24AM  
11 received notice that your call may be monitored or  
12 recorded?

13 A. I don't.

14 Q. You have no recollection one way or the  
15 other as you sit here today? 10:24AM

16 A. I don't.

17 Q. Did you at some point hire an attorney to  
18 pursue this case?

19 A. Yes, Mr. Lipton.

20 Q. When did you hire Mr. Lipton? 10:25AM

21 A. I can't give you a specific date, but I  
22 would imagine May 2009.

23 Q. Do you have an agreement with Mr. Lipton  
24 regarding his representation of you in this case?

25 A. Can you be more specific? 10:25AM

1 Q. Is there anything else about that code  
2 section that you know about?

3 A. That's about it. That's the general idea.

4 Q. When did you decide to file a lawsuit  
5 against Time Warner Cable?

10:30AM

6 A. It would have been shortly after my call in  
7 May of 2009.

8 Q. Do you know whether there are any other  
9 plaintiffs in this case?

10 A. There -- yes.

10:31AM

11 Q. Do you know any of the other plaintiffs?

12 A. I know a Cheryl Bacca.

13 Q. Do you know whether or not Jaime Calzada  
14 has been a plaintiff in this case?

15 A. I believe he is.

10:31AM

16 Q. How do you know Cheryl Bacca?

17 A. She was the -- or she was the office  
18 manager at the building where I used to work.

19 Q. Which building is that?

20 A. 5 -- 5900 Sepulveda Boulevard.

10:32AM

21 Q. Is she still the office manager there?

22 A. I don't know.

23 Q. Was she the office manager for the entire  
24 building or a particular business in the building?

25 A. I believe the entire building.

10:32AM

1 Mr. Lipton and this deposition, what else have you  
2 discussed with Jaime regarding the status of the  
3 litigation at any time?

4 A. That's about it.

5 Q. What did you tell Jaime about the 10:39AM  
6 deposition today?

7 A. That it was going to be taking place today.

8 Q. Did you discuss anything else about the  
9 case?

10 A. No. 10:39AM

11 Q. Did you discuss whether or not Jaime would  
12 be deposed?

13 A. I asked him if he had been deposed already.

14 Q. What did he say?

15 A. No. Or at least I don't believe so. My 10:40AM  
16 understanding was no.

17 Q. Did you discuss with Jaime whether or not  
18 he will be deposed in the future?

19 A. We wondered it.

20 Q. When did that discussion take place? 10:40AM

21 A. Yesterday.

22 Q. Did you discuss the status of the case with  
23 Jaime yesterday?

24 A. Just that I would be deposed. That's it.

25 Q. What is the status of the case? 10:40AM

1 A. I don't really understand that.

2 MR. GREIFINGER: Objection, calls for a  
3 legal conclusion.

4 BY MR. MERRYMAN:

5 Q. You may answer. 10:41AM

6 MR. GREIFINGER: You can answer.

7 THE WITNESS: Pending. I don't know.

8 BY MR. MERRYMAN:

9 Q. Do you know anything about the status of  
10 the case other than it's pending? 10:41AM

11 A. No.

12 Q. Do you know who the parties to your case  
13 are?

14 A. Time Warner Cable.

15 Q. Do you know of any other parties to your 10:41AM  
16 case?

17 A. My class.

18 Q. Anyone else?

19 A. I believe my brother.

20 Q. Anyone else that you know of? 10:41AM

21 A. Cheryl Bacca.

22 Q. Is there anyone else who you believe to be  
23 a party to this case?

24 A. That's all I remember.

25 Q. As you sit here today, your understanding 10:42AM

1 is that the parties to this case are you, Jaime  
2 Calzada, Cheryl Bacca and Time Warner Cable; is that  
3 correct?

4 A. Specifically, yeah, that's all I remember.

5 Q. Do you have an understanding of what claims 10:42AM  
6 for relief you allege against Time Warner Cable?

7 A. I don't. Well -- yeah, I don't.

8 Q. As you sit here today, you don't have an  
9 understanding as to what claims for relief you  
10 allege against Time Warner Cable; is that correct? 10:43AM

11 A. Well, I don't understand what "claims for  
12 relief" means.

13 Q. Do you know what the claims that you're  
14 alleging against Time Warner Cable are?

15 A. That I -- that my conversation -- that I 10:43AM  
16 wasn't given notice that my conversation would be  
17 recorded? Is that what you mean?

18 Q. Is that your complete understanding?

19 A. Yes.

20 Q. Do you know whether any depositions have 10:43AM  
21 been taken in this case other than your deposition?

22 A. No.

23 Q. Do you know what documents have been filed  
24 with the court in this case?

25 A. I don't. 10:43AM

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1 Q. Do you know what documents have been  
2 produced by Time Warner Cable to you in this case?

3 A. I don't.

4 Q. Do you know what documents you have  
5 produced to Time Warner Cable in this case?

10:44AM

6 A. I don't.

7 Q. Do you know what documents any other party  
8 has produced in this case?

9 A. No.

10 Q. Do you know what the procedural posture of  
11 this case is?

10:44AM

12 A. No.

13 Q. Do you -- strike that.

14 Do you know what relief you're seeking in  
15 this case?

10:44AM

16 A. On behalf of the class, I don't really know  
17 any specifics.

18 Q. Do you know what it is you're asking the  
19 court or a jury to grant you in relief in this case?

20 A. No.

10:45AM

21 Q. What class are you asking the court to  
22 represent in this case?

23 A. People who have been recorded without their  
24 consent by Time Warner Cable.

25 Q. What relief are you seeking on behalf of

10:46AM



Page 40

1 those people from the court?

2 A. I don't know the specifics of the relief.

3 Q. Do you know generally what relief you're  
4 seeking on behalf of the proposed class from the  
5 court?

10:46AM

6 A. I know that there is a statute, I believe,  
7 where -- I believe there's a penalty of -- I think  
8 it's about \$5,000 per call, which violates that  
9 rule. But I don't know specifically -- I don't know  
10 anything other than that.

10:47AM

11 Q. Do you know of any other relief that you're  
12 seeking on behalf of the proposed class from the  
13 court?

14 A. No.

15 Q. Did you first learn about the possible  
16 penalty at your meeting yesterday?

10:47AM

17 A. Yes.

18 Q. Prior to yesterday, did you know about the  
19 statute that you described and the possible penalty?

20 A. I knew of a statute, but I didn't know the  
21 specifics of it.

10:47AM

22 Q. What did you know about the statute prior  
23 to yesterday?

24 A. That there was a statute and that there was  
25 a penalty.

10:47AM

1 Q. Anything else?

2 A. No.

3 MR. GREIFINGER: When you find a convenient  
4 time, we've been going over an hour, so can we take  
5 a few-minute break?

10:48AM

6 MR. MERRYMAN: Just a couple more  
7 minutes --

8 MR. GREIFINGER: Sure.

9 MR. MERRYMAN: -- on this line.

10 BY MR. MERRYMAN:

10:48AM

11 Q. When did you learn of the proposed class  
12 that you hope to represent?

13 A. I'm not sure.

14 Q. Prior to yesterday, did you have an  
15 understanding of the proposed class that you hoped  
16 to represent?

10:48AM

17 A. People who had not been -- who had not been  
18 given notice that they were being recorded by Time  
19 Warner. That's -- that was my idea, I guess.

20 Q. And when did you come up with that idea?

10:49AM

21 A. I don't recall. I don't know.

22 Q. Does the proposed class that you hope to  
23 represent include people that have called Time  
24 Warner Cable anywhere in the country, or is it  
25 limited to a particular location?

10:49AM

1 A. I don't know. I don't know.

2 Q. Does the proposed class of people that you  
3 hope to represent include people who have received  
4 calls from Time Warner Cable or just people who have  
5 called Time Warner Cable?

10:49AM

6 A. I don't know.

7 Q. How do you propose to identify people who  
8 are members of your proposed class?

9 A. I don't know.

10 MR. MERRYMAN: Okay. Let's go off the  
11 record.

10:50AM

12 MR. GREIFINGER: All right.

13 THE VIDEOGRAPHER: Going off the record.

14 The time is 10:49 a.m.

15 (Recess taken.)

10:50AM

16 THE VIDEOGRAPHER: Back on the record. The  
17 time is 11:04 a.m.

18 THE WITNESS: May I? I'd like to make a  
19 correction to one of the questions I was asked.

20 Regarding the documents that I had  
21 reviewed, I also reviewed the original complaint as  
22 well as the special interrogatories.

11:04AM

23 BY MR. MERRYMAN:

24 Q. Did you review the original complaint  
25 during your meeting yesterday?

11:05AM

1 A. Yes.

2 Q. Had you seen the original complaint before  
3 your meeting yesterday?

4 A. I don't recall.

5 Q. Do you have email access?

11:05AM

6 A. Yes.

7 Q. Have you had email access at all times  
8 since May 2009?

9 A. Since May 2009, I believe so, yes.

10 Q. When you received documents -- strike that.

11:06AM

11 Have you ever received communications from  
12 your attorneys in this case by email?

13 A. No.

14 Q. Have you received communications from your  
15 attorneys in this case by U.S. mail?

11:06AM

16 A. Yes.

17 Q. And what have you received by mail from  
18 your attorneys in this case?

19 A. I believe I received the special  
20 interrogatories.

11:07AM

21 Q. Have you received anything else by mail?

22 A. I don't recall.

23 Q. When did you first meet Mr. Greifinger in  
24 person?

25 A. We met yesterday. I'm not too sure if I

11:07AM

1 case for the plaintiffs, for the class.

2 BY MR. MERRYMAN:

3 Q. Do you know of anyone else who represents  
4 you or the putative class?

5 A. No.

11:09AM

6 Q. Have you done anything other than talk to  
7 your attorneys to learn about the law that applies  
8 to the claims you're making against Time Warner  
9 Cable?

10 A. No.

11:10AM

11 Q. Have you done anything to learn about facts  
12 which might be relevant to your case against Time  
13 Warner Cable?

14 A. No.

15 Q. What is your understanding of the  
16 obligations that you have as a class representative  
17 in this case?

11:10AM

18 A. My understanding is that I'm to protect the  
19 interest of the class.

20 Q. Do you have any obligations as a class  
21 representative other than to protect the interests  
22 of the class?

11:11AM

23 A. I believe that's it.

24 Q. What does that mean, to protect the  
25 interests of the class?

11:11AM

1           A.    The fiduciary interests of the class.  I  
2   believe I'm not supposed to make a deal with the --  
3   with any of the attorneys or anything to benefit  
4   myself.  I'm supposed to act solely in the interest  
5   of the class.

11:11AM

6           Q.    What do you understand that you're supposed  
7   to do to act solely in the interest of the class?

8           A.    Answer all questions truthfully regarding  
9   this case.

10          Q.    Answer all questions truthfully at this  
11   deposition or somewhere else?

11:12AM

12          A.    At this deposition or anywhere else.

13          Q.    Do you understand what obligations you may  
14   have other than answering questions at this  
15   deposition?

11:12AM

16          A.    No, not really.  I don't know.  I don't  
17   really know my obligations beyond this point.

18          Q.    Other than this case, have you previously  
19   served as a class representative?

20          A.    No.

11:13AM

21          Q.    Other than this case, have you previously  
22   discussed with anyone the possibility of serving as  
23   a class representative?

24          A.    No.

25          Q.    Do you know of any individuals who called

11:13AM

1 Time Warner Cable and spoke with a customer service  
2 representatives -- strike that.

3 Do you know of any individuals who called  
4 Time Warner Cable and spoke to a customer service  
5 representative but did not receive notice that his 11:13AM  
6 or her call might be monitored or recorded?

7 A. Other than myself, I know of my brother.

8 Q. Do you know of anyone else other than you  
9 and your brother?

10 A. No. 11:14AM

11 Q. What is your understanding of calls that  
12 your brother has made to Time Warner Cable with  
13 respect to whether or not he received notice his  
14 call might be monitored or recorded?

15 A. I know that he made a call in May to cancel 11:14AM  
16 services.

17 Q. May of what year?

18 A. 2009.

19 Q. What do you know about that call?

20 A. He made a call to cancel his phone service, 11:14AM  
21 I believe.

22 Q. Did he, in fact, cancel phone service?

23 A. He asked that it be canceled. It was later  
24 that we received something, a bill in the mail,  
25 stating that they were still charging us for that 11:15AM

1 Q. And it's your testimony here today that you  
2 don't know of anyone that's called Time Warner Cable  
3 and received such a notice?

4 A. That's correct.

5 Q. Do you know of anyone that falls within the 11:21AM  
6 class that you hope to represent in this case?

7 A. My -- yes.

8 Q. Who?

9 A. My brother.

10 Q. Anyone else? 11:21AM

11 A. No.

12 Q. And what's the basis for your belief that  
13 your brother falls within the class that you hope to  
14 represent in this case?

15 A. He made a call to Time Warner Cable. 11:21AM

16 Q. Is there any other basis?

17 A. No.

18 Q. To be a member of the class that you  
19 propose to represent, does it matter whether the  
20 caller expected his or her call to be confidential? 11:22AM

21 A. I don't know.

22 Q. To be a member of the class that you  
23 proposed to represent, would it matter whether the  
24 caller to Time Warner Cable called from a public  
25 place and was surrounded by people who could hear 11:22AM



1 the content of the conversation during the call?

2 A. I don't know.

3 Q. To be a member of your proposed class in  
4 this case, does it matter whether a proposed class  
5 member is a subscriber to Time Warner Cable?

11:22AM

6 A. I don't know.

7 Q. Do you know how you would identify a  
8 proposed member of your class who has never been a  
9 subscriber to Time Warner Cable?

10 A. I don't know.

11:23AM

11 Q. Do you know how you would identify a member  
12 of your proposed class who was not a subscriber to  
13 Time Warner Cable at the time he or she called?

14 A. No, I don't.

15 Q. Do you have an understanding of the  
16 compensation you'll receive if you're successful in  
17 this lawsuit?

11:23AM

18 A. I do not.

19 Q. Do you have any expectation as to what you  
20 expect to receive if you're successful in this  
21 lawsuit?

11:23AM

22 A. I do not.

23 Q. Are you prepared to be responsible for Time  
24 Warner Cable's costs if you are not successful in  
25 this lawsuit?

11:24AM

1 A. No.

2 Q. Do you understand that if you're not  
3 successful in this lawsuit, you may be responsible  
4 for Time Warner Cable's costs?

5 A. No.

11:24AM

6 Q. Is there an amount of Time Warner Cable's  
7 costs that you're prepared to pay if you're not  
8 successful in this lawsuit?

9 A. No.

10 Q. Are you prepared to pay a single dollar of  
11 Time Warner Cable's costs if you're not successful  
12 in this lawsuit?

11:24AM

13 A. I'm -- no.

14 Q. Do you have an understanding of who's going  
15 to pay Time Warner Cable's costs if you're not  
16 successful in this lawsuit?

11:24AM

17 A. I do not.

18 Q. Have you been told that you will not be  
19 responsible for costs if you're not successful in  
20 this lawsuit?

11:25AM

21 A. I have not.

22 Q. Have you had any discussion whatsoever  
23 about who would be responsible for costs if you're  
24 not successful in this lawsuit?

25 A. No.

11:25AM

1 Q. Earlier, you identified two calls that you  
2 could recall to Time Warner Cable during which you  
3 did not receive notice that the call may be  
4 monitored or recorded and spoke to a customer  
5 service representative.

11:26AM

6 Do you recall that testimony?

7 A. Yes.

8 Q. And those calls you testified you made in  
9 May of 2009 and February of 2010; is that correct?

10 A. It is.

11:26AM

11 Q. How do you recall those two dates?

12 A. I just do.

13 Q. Do you recall the specific dates?

14 A. No.

15 Q. For example, can you tell me which date in  
16 May of 2009 you called Time Warner Cable?

11:26AM

17 A. I cannot.

18 Q. Can you tell me which date in February of  
19 2010 you called Time Warner Cable?

20 A. I cannot.

11:26AM

21 Q. If you wanted to figure out which date in  
22 May of 2009 you called Time Warner Cable, is there  
23 anything you could do to figure that out?

24 A. Yes.

25 Q. What would you do?

11:27AM

1 A. I believe those dates are in the complaint.

2 Q. What did you do to figure out the dates so  
3 that they could be put in the complaint?

4 A. Initially when I made the call in May, it  
5 was soon after that I spoke with Mr. Lipton, so it 11:27AM  
6 was fresh in my memory.

7 Q. And did you give Mr. Lipton the date?

8 A. Yes.

9 Q. Prior to you retaining Mr. Lipton, did he  
10 tell you that he was contemplating filing a class 11:28AM  
11 action against Time Warner Cable?

12 A. No.

13 Q. Prior to you retaining Mr. Lipton, did he  
14 tell you that he was aware of other people that had  
15 called Time Warner Cable and had not received notice 11:28AM  
16 that their call might be monitored or recorded?

17 A. No.

18 Q. Prior to your retaining Mr. Lipton, were  
19 you aware of any possible litigation against Time  
20 Warner Cable for not providing notice that a call 11:28AM  
21 may be monitored or recorded?

22 A. No.

23 Q. When is the first time you heard about  
24 possible litigation against Time Warner Cable?

25 A. I had not heard of anything. 11:28AM

1 Q. Until when?

2 A. I had not heard of anything. Just my case.

3 Q. Prior to speaking to Mr. Lipton, why did  
4 you think your call to Time Warner Cable was  
5 recorded?

11:29AM

6 A. In my follow-up call to Time Warner, I had  
7 been made aware that my call was being recorded  
8 after I had asked what sort of records they had in  
9 regards to the cancellation of our phone service.

10 Q. What were you made aware of?

11:30AM

11 A. That the phone call was being recorded.

12 Q. When were you told that?

13 A. After I had inquired regarding the records  
14 regarding canceling my -- the phone service.

15 Q. So when you say "the record regarding  
16 canceling the phone service," you're talking about  
17 the records regarding canceling the phone service in  
18 Jaime Calzada's name; correct?

11:30AM

19 A. Correct.

20 Q. When was the conversation you had with Time  
21 Warner Cable in which you were made aware that your  
22 calls were being recorded?

11:31AM

23 A. Can you repeat that? I'm sorry.

24 Q. When was the conversation you had with Time  
25 Warner Cable during which you were made aware that

11:31AM

1 your calls were being recorded?

2 MR. GREIFINGER: Objection, misstates his  
3 testimony. "Calls" is plural.

4 BY MR. MERRYMAN:

5 Q. You may answer. 11:31AM

6 A. Oh, in May of 2009.

7 Q. What specifically were you told by Time  
8 Warner Cable regarding the recording of calls during  
9 that conversation?

10 A. That all -- I believe that all calls were 11:31AM  
11 recorded.

12 Q. Who told you that?

13 A. I don't remember.

14 Q. Was -- were you told that in May of 2009 by  
15 a Time Warner Cable customer service representative? 11:32AM

16 A. I'm sorry. I was told that that call was  
17 being recorded.

18 Q. Which call?

19 A. My call with the customer service agent.

20 Q. What specifically were you told? 11:32AM

21 A. I don't remember specifically.

22 Q. During your call in May 2009, were you  
23 informed that your call was being recorded by  
24 recorded notice or by the customer service  
25 representative with whom you spoke, or both? 11:33AM

1 A. I was not given notice by a recording. I  
2 was given notice by the customer service rep after I  
3 had inquired about the phone bill.

4 Q. What specifically did the customer service  
5 representative tell you about the recording of 11:33AM  
6 calls?

7 A. All I remember is that she said that my  
8 call was being recorded.

9 Q. Did she tell you that the call that you  
10 were in the process of having was being recorded? 11:33AM

11 A. I don't recall.

12 Q. Did -- was it a man or a woman with whom  
13 you spoke?

14 A. I believe it was a woman.

15 Q. Did she tell you that the prior call 11:34AM  
16 regarding the cancellation of phone service had been  
17 recorded?

18 A. Yes.

19 Q. Did she tell you that Time Warner Cable  
20 records all calls? 11:34AM

21 A. I don't recall.

22 Q. Did she explain to you in May 2009 Time  
23 Warner Cable's policy with respect to recording  
24 customer service calls?

25 A. I don't recall. 11:34AM

1 Q. As of May 2009, you understood that Time  
2 Warner Cable records customer service calls; is that  
3 correct?

4 A. No.

5 Q. As of May 2009, you understood that Time 11:35AM  
6 Warner Cable records at least some customer service  
7 calls; is that correct?

8 A. I -- specifically, the call that I -- my  
9 brother made.

10 Q. As of 2009, you understood that Time Warner 11:35AM  
11 Cable records at least some customer service calls;  
12 is that correct?

13 A. That is correct.

14 Q. So as of May 2009, if you called Time  
15 Warner Cable, you understood that it was possible 11:35AM  
16 that a customer service call could be recorded;  
17 correct?

18 A. No.

19 Q. As of May 2009, you were told that certain  
20 customer service calls had been recorded. That's 11:36AM  
21 correct?

22 A. That my brother's had been recorded.

23 Q. And that when you were speaking to a  
24 customer service representative in May of 2009, you  
25 were told that the call that you were on was being 11:36AM



1 recorded; is that correct?

2 A. I don't recall.

3 Q. Did you ask the customer service  
4 representative whether the call that you were on was  
5 being recorded?

11:36AM

6 A. I don't recall.

7 Q. So you may have been told it was being  
8 recorded or you may not have, you just don't recall  
9 as you're sitting here today; is that correct?

10 A. I don't recall.

11:36AM

11 Q. You don't recall one way or the other;  
12 right?

13 A. Correct.

14 Q. As of May 2009, you knew that Time Warner  
15 Cable had recorded at least some of its customer  
16 service calls; is that right?

11:37AM

17 MR. GREIFINGER: Objection, asked and  
18 answered.

19 BY MR. MERRYMAN:

20 Q. You may answer.

11:37AM

21 A. Correct. I knew of my brother's.

22 Q. You knew that your brother had called  
23 888-TW-CABLE for the call that you had been told was  
24 recorded; correct?

25 A. Correct.

11:37AM

1 than a call on February 6, 2010?

2 A. Specifically, no.

3 Q. I believe you testified earlier that any  
4 calls you've made to Time Warner Cable, other than  
5 the calls on May 27, 2009, and February 6, 2010, you 11:44AM  
6 don't recall one way or the other whether you  
7 received notice that your call may be monitored or  
8 recorded; is that correct?

9 A. I don't recall my answer.

10 Q. Is your testimony that you know the call 11:44AM  
11 you made to Time Warner Cable on May 27, 2009, was  
12 recorded because the customer service representative  
13 with whom you spoke told you that it was being  
14 recorded?

15 A. I don't recall. 11:45AM

16 Q. As you sit here today, you don't recall one  
17 way or the other whether you were told that the  
18 May 27, 2009 call was being recorded; is that  
19 correct?

20 A. On the 27th, no, I don't recall. 11:45AM

21 Q. What was the purpose of your call on  
22 May 27, 2009?

23 A. To inquire on a bill.

24 Q. What specifically were you calling to  
25 inquire about? 11:45AM

1 A. The cancellation of a service.

2 Q. What was the issue with respect to the  
3 bill?

4 A. The service was not terminated.

5 Q. In what respect? 11:46AM

6 A. We received an invoice, and it didn't  
7 reflect the cancellation.

8 Q. So were you charged for phone service even  
9 though you had called to cancel it?

10 A. My brother had called to cancel it, yes. 11:46AM

11 Q. Why did you call instead of Jaime?

12 A. I don't recall.

13 Q. During the May 27, 2009 call to Time Warner  
14 Cable, did you identify yourself as Miguel Calzada?

15 A. I believe so. 11:46AM

16 Q. Did you inform Time Warner Cable during the  
17 May 27, 2009 call that you were not the account  
18 holder?

19 A. I believe so.

20 Q. When you called to discuss the billing 11:47AM  
21 issue on May 27, 2009, did you understand that the  
22 customer service representative might have to  
23 discuss that issue with someone else in order to  
24 resolve it?

25 A. Yes. 11:47AM

1 (The deposition of MIGUEL CALZADA was  
2 reconvened at 12:58 p.m.)

3

4 THE VIDEOGRAPHER: This is the beginning of  
5 disc 2. We are back on the record. The time is 12:58PM  
6 12:58 p.m.

7

8 MIGUEL CALZADA,  
9 the witness, having been previously administered an  
10 oath by the Court Reporter, testified further as  
11 follows:

12

13 EXAMINATION (CONTINUING)

14 BY MR. MERRYMAN:

15 Q. Good afternoon, Mr. Calzada. 01:54PM

16 Do you understand that you're still under  
17 oath?

18 A. Yes.

19 Q. From what telephone number did you call  
20 Time Warner Cable on May 27, 2009? 12:59PM

21 A. It would have been either my brother's  
22 phone number or our home phone number, but I'm  
23 leaning more towards my brother's phone number.

24 Q. And your brother's phone number?

25 A. Is (818) 939-1100. 12:59PM

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1 Q. Do you see on line 9 of your interrogatory  
2 response, you identify the number as (818) 939-1100?

3 A. Yes.

4 Q. Is that the number you called from, to the  
5 best of your recollection?

12:59PM

6 A. Yes.

7 May I? I'm noticing an error here on  
8 line 11. It should read -- instead of 996-4268, it  
9 should read 968-4268. I'm sorry. I missed that.

10 Q. Why did you call Time Warner on May 27,  
11 2009, from your brother's cell phone number?

01:00PM

12 A. I don't remember.

13 Q. Did you call from his cell phone so that  
14 Time Warner Cable would think it was Jaime Calzada  
15 calling?

01:00PM

16 A. No, I don't believe so. I -- what may have  
17 happened is my land line may not have been working,  
18 my best guess, but I don't remember.

19 Q. Did you have a cell phone --

20 A. I did.

01:01PM

21 Q. -- on May 27, 2009?

22 A. I did.

23 Q. But you chose to use your brother's cell  
24 phone to make the call to Time Warner Cable instead  
25 of your own; correct?

01:01PM

1 with that agent?

2 A. After answering those prompts, I was put on  
3 hold, and eventually a customer service person  
4 answered my call.

5 Q. How long were you on hold? 01:07PM

6 A. I don't recall.

7 Q. Do you have any recollection whatsoever as  
8 to how long you were on hold?

9 A. I don't. I don't.

10 Q. While you were on hold, did you hear 01:07PM  
11 anything?

12 A. I don't recall anything specific.

13 Q. Can you recall anything generally playing  
14 while you were on hold?

15 A. There may have been advertisements for Time 01:08PM  
16 Warner services.

17 Q. Do you recall whether or not there were ads  
18 one way or the other on the May 27 --

19 A. I don't. I don't.

20 Q. While you were on hold on the May 27, 2009 01:08PM  
21 call, did you hear an automated recording state that  
22 your call may be monitored or recorded by  
23 supervisory personnel?

24 A. No.

25 Q. And you're sure of that even though you 01:08PM

1 can't recall one way or the other whether or not  
2 there were advertisements playing during -- while  
3 you were holding?

4 MR. GREIFINGER: Objection, argumentative.

5 BY MR. MERRYMAN:

6 Q. Is that your testimony?

7 A. Yes.

8 Q. So as you sit here today, you can't recall  
9 whether or not, while you were on hold, there was  
10 silence or there was something playing; is that 01:08PM  
11 correct?

12 A. Correct.

13 Q. After the agent answered your call, what  
14 did you discuss?

15 A. The bill in question. 01:09PM

16 Q. Anything else?

17 A. I don't believe so.

18 Q. During that call, did you resolve the  
19 billing issue that you had called about?

20 A. I believe so. 01:09PM

21 Q. How was it resolved?

22 A. I believe I was given instructions on  
23 contacting AT&T.

24 Q. What was the purpose of contacting AT&T?

25 A. To see whether or not it was their duty to 01:09PM

1 shut off the phone services or not.

2 Q. Whose duty?

3 A. AT&T's.

4 Q. Did you resolve the issue regarding the  
5 charges that you did not think were proper on your 01:10PM  
6 bill during that call?

7 A. I believe so.

8 Q. How was that issue resolved?

9 A. I'm not sure. I'm not sure. I'm not sure  
10 if I contacted AT&T and they resolved it or Time 01:10PM  
11 Warner took care of it. But I do remember being  
12 sent to -- being asked to call AT&T.

13 Q. How long did your call with the customer  
14 service representative last?

15 A. A few minutes, I would guess. 01:10PM

16 Q. Do you recall or are you guessing?

17 A. I don't recall.

18 Q. Do you know one way or the other whether  
19 your call on May 27, 2009, was recorded by Time  
20 Warner Cable? 01:11PM

21 A. I don't recall.

22 Q. As you sit here today, do you know whether  
23 or not your call with Time Warner Cable on May 27,  
24 2009, was recorded?

25 A. I believe it may have been. 01:11PM



1 Q. What's the basis for your belief?

2 A. I believe I was told by, I believe, my  
3 attorneys that --

4 MR. GREIFINGER: Don't.

5 THE WITNESS: No? Okay. 01:12PM

6 MR. GREIFINGER: No, no.

7 THE WITNESS: I don't know. I don't know.

8 I don't recall.

9 BY MR. MERRYMAN:

10 Q. You don't know one way or the other whether 01:12PM  
11 your call with Time Warner Cable on May 27, 2009,  
12 was recorded; correct?

13 A. I don't recall.

14 Q. And you don't know one way or the other  
15 whether your call with Time Warner Cable on May 27, 01:12PM  
16 2009, was monitored; is that correct?

17 A. That's correct.

18 Q. Do you know one way or the other whether  
19 your call with Time Warner Cable on May 27, 2009,  
20 was overheard by anyone? 01:12PM

21 A. I don't know.

22 Q. During your call with Time Warner Cable on  
23 May 27, 2009, were you concerned that your call may  
24 be monitored or recorded?

25 A. I don't know. 01:13PM

1 Q. Did you express any concern to the Time  
2 Warner Cable customer service representative during  
3 the call?

4 A. I don't recall.

5 Q. At what point in time did you realize that 01:13PM  
6 your call on May 27, 2009 -- strike that.

7 At what point in time did you realize that  
8 you had not been notified that your call may be  
9 monitored or recorded by Time Warner Cable?

10 A. I don't recall. It was like two years ago. 01:14PM  
11 I don't recall.

12 Q. Did you realize you didn't receive the  
13 notice during the call or sometime after the call?

14 A. It would have been sometime after the call.

15 Q. And what caused you to think about whether 01:14PM  
16 or not you had received the notice?

17 A. I inquired as to the records they kept for  
18 the cancellation of services. Yeah.

19 Q. When was that?

20 A. That was in my conversation on May 27, 01:15PM  
21 2009, regarding the conversation my brother had had  
22 with Time Warner Cable.

23 Q. So that was during the May 27, 2009 call;  
24 is that correct?

25 A. Can you repeat that? I'm not really 01:15PM

1 Q. You testified that you also called Time  
2 Warner Cable on February 6, 2010; is that correct?

3 A. Correct.

4 Q. And it's your testimony that Time Warner  
5 Cable did not provide you with notice that the call 01:17PM  
6 may be monitored or recorded during that call; is  
7 that correct?

8 A. That is correct.

9 Q. What was the purpose of your call to Time  
10 Warner Cable on February 6, 2010? 01:17PM

11 A. To order a pay-per-view event.

12 Q. What pay-per-view event were you ordering?

13 A. It was a UFC fight.

14 Q. Was that UFC No. 109?

15 A. I believe so. 01:18PM

16 Q. And did you, in fact, order that  
17 pay-per-view event?

18 A. Yes.

19 Q. Did you order UFC 109 for Jaime Calzada's  
20 account? 01:18PM

21 A. No.

22 Q. For whose account did you order it?

23 A. Janice Wells-Lipton.

24 Q. And what number did you call from to order  
25 that event? 01:18PM

1 A. I believe it would have been  
2 Ms. Wells-Lipton's phone number.

3 Q. What's her phone number?

4 A. (818) 625-8314.

5 Q. And whose number is (818) 968-4268? 01:18PM

6 A. That was my cell phone.

7 Q. As you sit here today, do you know which  
8 number you used to order the pay-per-view event?

9 A. I do not.

10 Q. Do you recall one way or the other, or 01:19PM  
11 you're just not sure?

12 A. I am not sure, but it would have been from  
13 either of those two numbers.

14 Q. Do you recall whether you spoke to someone  
15 during the February 6 call? 01:19PM

16 A. Yes.

17 Q. How did you recall that you made a call on  
18 February 6, 2010, for purposes of this lawsuit?

19 A. I remember watching the fight.

20 Q. What was the date of the fight? 01:20PM

21 A. Sometime in February 2010.

22 Q. How do you recall that you made the phone  
23 call on February 6?

24 A. I would have told my attorney soon  
25 thereafter. 01:20PM

1 Q. And did you choose that option?

2 A. I did.

3 Q. How did you proceed?

4 A. I tried to order the pay-per-view event

5 online, but I believe because of a bill to Time 01:24PM

6 Warner Cable being paid late, I was -- I was not

7 able to order the service with the remote, and I was

8 prompted, a message on my TV screen, to call

9 TW-CABLE if I wanted to order it.

10 Q. Is that the call that you then made? 01:24PM

11 A. Yes.

12 Q. So how did you proceed during the call with

13 respect to the prompts?

14 A. As I said earlier, I called the phone

15 number, chose to speak in English, and there was an 01:25PM

16 advert for UFC, and I chose that one.

17 Q. Did you -- were you able to order the

18 fight, or did you speak to a customer service

19 representative?

20 A. After selecting that prompt, I was put on 01:25PM

21 hold and I spoke to a customer service agent.

22 Q. Do you recall what you heard while you were

23 on hold?

24 A. Specifically, no.

25 Q. Do you recall generally what you heard 01:25PM

1 while you were on hold on February 6, 2010?

2 A. Yes.

3 Q. What do you recall hearing while you were  
4 on hold?

5 A. Adverts for Time Warner Cable services. 01:26PM

6 Q. What specifically did you hear?

7 A. I don't recall anything specific.

8 Q. Do you recall how long you were on hold on  
9 February 6?

10 A. I believe it was for more than a few 01:26PM  
11 minutes as -- excuse me -- as the customer service  
12 agents were very busy or they had a high volume of  
13 calls.

14 Q. Can you recall specifically the content of  
15 any of the advertisements you heard while you were 01:27PM  
16 on hold on February 6?

17 A. Specifically, no.

18 Q. Can you recall generally the content of any  
19 of the advertisements you heard while you were on  
20 hold on February 6? 01:27PM

21 A. I know that there were advertisements for  
22 UFC.

23 Q. Can you recall anything else you heard  
24 while you were on hold?

25 A. No. 01:27PM

1 Q. Do you recall whether or not you heard a  
2 message that your call may be monitored or recorded?

3 A. Can you repeat that? I'm sorry.

4 Q. Do you recall, while you were on hold on  
5 February 6, 2010, whether or not you heard a message 01:27PM  
6 that your call may be monitored or recorded?

7 A. Whether or not, yes.

8 Q. What do you recall?

9 A. That I was not.

10 Q. I'm sorry. Do you recall that -- strike 01:27PM  
11 that.

12 Did you hear a message while you were on  
13 hold on February 6 that your call may be monitored  
14 or recorded?

15 A. No. 01:28PM

16 Q. And you're certain about that?

17 A. Yes.

18 Q. Why are you certain?

19 A. Because all I heard was advertisements.

20 Q. So even though you can't remember the 01:28PM  
21 content of the advertisements, you can remember, as  
22 you sit here today, with certainty that you didn't  
23 receive a notice that your call might be monitored  
24 or recorded during several minutes of -- that you  
25 were on hold? 01:28PM

1 MR. GREIFINGER: Objection, argumentative.

2 BY MR. MERRYMAN:

3 Q. Is that your testimony?

4 MR. GREIFINGER: You can answer.

5 THE WITNESS: Okay.

01:28PM

6 Yes.

7 BY MR. MERRYMAN:

8 Q. Do you know whether or not your call to  
9 Time Warner Cable on February 6, 2010, was recorded?

10 A. No.

01:28PM

11 Q. Do you have any basis to believe way or the  
12 other whether or not your call on February 6, 2010,  
13 to Time Warner Cable was recorded?

14 A. Yes.

15 Q. What's the basis?

01:29PM

16 MR. GREIFINGER: We're invading the  
17 province of attorney-client.

18 BY MR. MERRYMAN:

19 Q. Putting aside conversations that you've had  
20 with your attorneys, do you have any independent  
21 basis to know or believe one way or the other  
22 whether or not your call to Time Warner Cable on  
23 February 6, 2010, was recorded?

01:29PM

24 A. No.

25 Q. For example, do you believe your call on

01:29PM



1 February 6, 2010, may have been recorded because you  
2 were told by an agent in 2009 that a call had been  
3 recorded?

4 A. No.

5 Q. Did you have any concern during your call 01:29PM  
6 on February 6, 2010, that your call may be monitored  
7 or recorded by Time Warner Cable?

8 A. No.

9 Q. It didn't concern you one way or the other.  
10 Is that your testimony? 01:30PM

11 A. Yes.

12 Q. At what point did you realize that your  
13 February 6 -- strike that.

14 At what point did you realize that during  
15 your February 6 call, you had not been notified that 01:30PM  
16 your call may be monitored or recorded?

17 A. After the completion of the call.

18 Q. Did you say anything to the customer  
19 service representative during the call about whether  
20 the call was being monitored or recorded or 01:31PM  
21 overheard?

22 A. I don't believe so.

23 Q. Did you realize during the call itself that  
24 you had not received notice that the call might be  
25 monitored or recorded? 01:31PM

1 A. During the call, no.

2 Q. How long after the call did you come to  
3 believe that you had not received notice that the  
4 call might be monitored or recorded?

5 A. Shortly thereafter. 01:31PM

6 Q. What does that mean, "shortly thereafter"?  
7 What period of time?

8 A. I don't recall a specific amount of time.

9 Q. Do you have any recollection whatsoever?

10 A. Of? I'm sorry. 01:31PM

11 Q. Do you have any recollection whatsoever as  
12 to how long after your February 6, 2010 call with  
13 Time Warner Cable you came to believe that you had  
14 not received notice that your call may be monitored  
15 or recorded? 01:32PM

16 A. No.

17 Q. So you don't recall whether it was an hour  
18 later, a day later or two weeks later?

19 A. Correct.

20 Q. What do you recall about your conversation 01:32PM  
21 with the customer service representative during the  
22 February 6 call?

23 A. What do I recall? That I ordered the  
24 pay-per-view service.

25 Q. Do you recall anything else? 01:32PM

1 A. Not being -- not hearing a message that it  
2 was being recorded.

3 Q. What do you recall about the conversation  
4 with the customer service representative other than  
5 ordering the pay-per-view fight?

01:33PM

6 A. I was asked whether or not I wanted the  
7 service in HD or standard definition.

8 Q. How did you respond?

9 A. I elected HD.

10 Q. Do you recall anything else from that  
11 conversation?

01:33PM

12 A. No, not really. It was about more than a  
13 year ago, so that's it.

14 Q. Do you recall discussing with the agent the  
15 status of the bill?

01:34PM

16 A. Can you be more specific?

17 Q. Well, you testified earlier you had to call  
18 and speak to the agent because you -- there was --  
19 the bill was late so you couldn't order it by  
20 remote; is that right?

01:34PM

21 A. Correct.

22 Q. When you spoke to the agent, did you  
23 discuss the status of the bill?

24 A. Yes.

25 Q. And did you have a discussion about whether

01:34PM

1 or not you could order the pay-per-view event, given  
2 the status of the bill?

3 A. Yes.

4 Q. And what do you recall about that  
5 discussion?

01:34PM

6 A. I recall having paid the bill a short time  
7 before placing the call to Time Warner Cable.  
8 And -- yes.

9 Q. So did you tell the agent that?

10 A. Yes.

01:35PM

11 Q. And what happened thereafter?

12 A. She resolved the issue and ordered the  
13 pay-per-view for me.

14 Q. So she decided to allow the pay-per-view  
15 event to ordered?

01:35PM

16 A. Correct.

17 Q. How did you identify yourself to Time  
18 Warner Cable during that call?

19 A. I believe I would have identified myself as  
20 Miguel Calzada.

01:35PM

21 Q. Do you recall with certainty one way or the  
22 other whether you identified yourself as Miguel  
23 Calzada?

24 A. I do not. I don't recall whether or not I  
25 was asked.

01:36PM

1 Q. So you don't recall one way or the other  
2 whether you identified yourself as Miguel Calzada;  
3 is that correct?

4 A. I don't recall.

5 Q. Do you recall anything about the UFC event 01:36PM  
6 that you ordered?

7 A. I remember watching it.

8 Q. Do you recall anyone that fought during  
9 that event?

10 A. Specifically, no. 01:37PM

11 Q. Can you recall anything about the event as  
12 you sit here today, the pay-per-view event 109?

13 A. Specifically, no.

14 Q. Do you recall anything generally about  
15 UFC 109? 01:37PM

16 A. Just that it was a UFC fight.

17 Q. How do you recall that that's the UFC  
18 pay-per-view event you ordered as opposed to some  
19 other pay-per-view event?

20 A. I don't know. 01:37PM

21 Q. Are you sure that's the UFC pay-per-view  
22 event you ordered, or could it have been another  
23 one?

24 A. It was a long time ago, so I don't remember  
25 the specific UFC number it was right now. Yeah. 01:38PM

1 Q. Have you ordered any other pay-per-view  
2 events from Time Warner Cable?

3 A. No.

4 Q. So at no time other than this one  
5 pay-per-view event have you ordered a pay-per-view 01:38PM  
6 event from Time Warner Cable?

7 A. That is correct. I believe so.

8 Q. Do you know the dates -- strike that.

9 Do you know of the dates of any other calls  
10 that you personally have made to Time Warner Cable 01:39PM  
11 in 2010 or 2011 other than February 6, 2010?

12 A. Specifically, no.

13 Q. And I believe you testified that you have  
14 never received a call from Time Warner Cable; is  
15 that correct? 01:40PM

16 A. I don't remember answering that question.

17 Q. Have you ever received a call from Time  
18 Warner Cable?

19 A. I have.

20 Q. When did you receive a call from Time 01:40PM  
21 Warner Cable?

22 A. I don't remember specifically.

23 Q. Can you remember generally?

24 A. It would have been during the installation  
25 of the cable boxes. 01:41PM

1 Q. Which cable boxes?

2 A. My cable boxes at 15128 and 4567.

3 Q. When did you have cable boxes installed at  
4 15128?

5 A. I don't recall.

01:41PM

6 Q. When did you receive a call from Time  
7 Warner Cable regarding the installation of those  
8 boxes?

9 A. I don't recall specifically.

10 Q. What do you recall about the call that you  
11 received? 01:41PM

12 A. It would have been a call from a technician  
13 on behalf of Time Warner Cable to let me know that  
14 he was in the area to install the cable boxes.

15 Q. So the call that you received regarding  
16 installation of the boxes at 15128 was from a  
17 technician in a Time Warner Cable van who was on his  
18 way or her way to your house -- 01:42PM

19 MR. GREIFINGER: Objection --

20 BY MR. MERRYMAN:

21 Q. -- is that correct?

22 MR. GREIFINGER: -- calls for speculation.

23 THE WITNESS: I would imagine so.

24 BY MR. MERRYMAN:

25 Q. And did you receive one or more calls from 01:42PM

Page 96

1 the technician that he was on his way?

2 A. I don't recall.

3 Q. What about the call or calls you received  
4 regarding the installation of boxes at 4567? Was it  
5 a similar type of call or different?

01:42PM

6 A. I don't recall.

7 Q. Did you receive a call regarding the  
8 installation of the boxes at 4567?

9 A. I don't recall whether or not I was present  
10 during the installation of the boxes at 4567.

01:43PM

11 Q. So is it your testimony that you don't  
12 recall one way or the other whether you ever  
13 received a call from Time Warner Cable regarding the  
14 installation of the box at 4567?

15 A. That is correct.

01:43PM

16 Q. So as you sit here today, is it correct  
17 that you recall one call from a technician regarding  
18 the installation of your cable boxes at 15128 from  
19 Time Warner Cable?

20 A. Correct.

01:43PM

21 Q. Do you recall any other calls from Time  
22 Warner Cable to you at any time other than the ones  
23 you've just testified about?

24 A. Right now, I do not. I do not recall any  
25 other than those.

01:44PM



1 Q. In calling any company's customer service  
2 numbers, have you ever heard a notice that your call  
3 may be monitored or recorded?

4 A. I don't recall.

5 Q. As you sit here today, can you recall 01:44PM  
6 hearing a notice that a call may be monitored or  
7 recorded from any company that you've called at any  
8 time?

9 A. Not specifically, but yes.

10 Q. What do you recall that you've heard in the 01:44PM  
11 past?

12 A. I remember an automated message, but I  
13 don't remember to which company it was, nor the  
14 specific date.

15 Q. Was that recently or sometime in the past? 01:45PM

16 A. Sometime in the past.

17 Q. Can you recall hearing such an automated  
18 message from one company or a lot of different  
19 companies?

20 A. I don't recall. 01:45PM

21 Q. Do you have any recollection, as you sit  
22 here today, of an automated message that a call may  
23 be monitored or recorded from any company at any  
24 time?

25 A. Not specifically. 01:45PM

1 Q. It's -- is it just your recollection that  
2 you may have heard one at some point in the past?

3 A. Correct.

4 Q. Can you tell me how frequently you hear an  
5 automated message that a call may be monitored or 01:46PM  
6 recorded when you call a toll-free number?

7 A. I can't give you an estimate. I don't --

8 Q. Do you have a belief as to whether you hear  
9 such a message anywhere from zero to a hundred  
10 percent of the time when you call a toll-free 01:46PM  
11 number?

12 A. I can't tell you. I can't give you a  
13 specific occasion where it has happened or has not  
14 other than these two dates.

15 Q. Is it your testimony that, other than the 01:47PM  
16 two calls that you made to Time Warner Cable on  
17 May 27, 2009, and February 6, 2010, you can't recall  
18 whether or not you received a message that your call  
19 may be monitored or recorded during any of the other  
20 calls you've made to toll-free numbers at any time? 01:47PM

21 A. A specific one, no.

22 Q. And it's your belief that at some point in  
23 the past, you've heard such an automated message,  
24 but you can't tell me when or how often, as you sit  
25 here today; is that correct? 01:47PM

Page 99

1 A. Correct.

2 Q. Is it possible that you hear these notices  
3 that your calls may be monitored or recorded all the  
4 time and you just don't recall?

5 A. No.

01:48PM

6 Q. So you think you rarely hear these, that  
7 these types of messages are rarely played when you  
8 call a toll-free number. Is that your testimony?

9 MR. GREIFINGER: Objection, misstates  
10 testimony.

01:48PM

11 THE WITNESS: I can answer? Okay.

12 I'm sorry. Can you restate the question,  
13 please.

14 BY MR. MERRYMAN:

15 Q. You've testified that you can't give me a  
16 percentage estimate, anywhere from zero to a  
17 hundred, as to how often, when you call a toll-free  
18 number, you hear an automated message that your call  
19 may be monitored or recorded; is that correct?

01:48PM

20 A. That is correct.

01:48PM

21 Q. And you've testified that you don't  
22 believe, as you sit here today, that you hear these  
23 messages frequently when you call a toll-free  
24 number; is that correct?

25 A. No.

01:49PM

Page 100

1 Q. So is it your testimony that you may hear  
2 these messages frequently when you call a toll-free  
3 number, but you just can't recall as you sit here  
4 today?

5 A. Correct.

01:49PM

6 MR. GREIFINGER: Let me object to the  
7 previous question as compound.

8 BY MR. MERRYMAN:

9 Q. Can you tell me with certainty, other than  
10 the two calls you made to Time Warner Cable on  
11 May 27, 2009, and February 6, 2010, whether or not  
12 you received notice that your call may be monitored  
13 or recorded during any specific call you've made to  
14 a toll-free number and spoke to a customer service  
15 representative over the last three years?

01:49PM

16 A. During a specific call, no. I don't have a  
17 specific call in mind.

18 Q. When you call a customer service call  
19 center and speak to a service agent, do you have an  
20 expectation that that agent is going to create a  
21 record or take notes concerning your conversation?

01:50PM

22 A. Not unless I have been told that I would  
23 be.

24 Q. So you don't have an expectation that a  
25 customer service representative is making a record

01:50PM

1 speculation, also expert opinion.

2 THE WITNESS: Am I to answer?

3 BY MR. MERRYMAN:

4 Q. Yeah.

5 A. I don't know.

01:53PM

6 Q. You don't know one way or the other; is  
7 that right?

8 A. Correct.

9 MR. GREIFINGER: When you come to a logical  
10 break, we've been going over an hour, or almost an  
11 hour.

01:53PM

12 BY MR. MERRYMAN:

13 Q. When you call a customer service center,  
14 are there certain types of calls that you expect to  
15 be confidential and others that you would not expect  
16 to be confidential?

01:53PM

17 A. I expect all calls to be confidential.

18 Q. What does that mean, to be confidential?  
19 Confidential between whom?

20 A. Between me and the customer service agent.

01:54PM

21 Q. Well, the two calls that you've testified  
22 about on May 27, 2009, and February 6, 2010, you  
23 weren't the account holder for either call; correct?

24 A. Correct.

25 Q. So it was your expectation, when you made

01:54PM

1 those calls, that the content of the call would not  
2 be shared with the account holder?

3 A. I didn't -- I don't know.

4 Q. Well, is -- was -- is that your  
5 expectation, that you would call Time Warner Cable 01:54PM  
6 about Jaime Calzada's account and the content of  
7 your call would not be shared with Jaime Calzada?

8 MR. GREIFINGER: Objection, as to -- that's  
9 a vague question specifically as to whom would be  
10 doing the sharing. That's a vague question. 01:55PM

11 THE WITNESS: Yeah, I don't know.

12 BY MR. MERRYMAN:

13 Q. When you called Time Warner Cable on  
14 May 27, 2009, about Jaime Calzada's account, did you  
15 have an expectation that anything that was discussed 01:55PM  
16 during that call would be shared with Jaime Calzada  
17 since it was his account?

18 MR. GREIFINGER: I'm going to renew the  
19 objection, argumentative and vague.

20 THE WITNESS: I don't know. 01:55PM

21 BY MR. MERRYMAN:

22 Q. So is it your testimony that you had an  
23 expectation of confidentiality or you don't know  
24 whether you've had an expectation of confidentiality  
25 when you called Time Warner Cable on May 27, 2009, 01:55PM

1 about Jaime Calzada's account?

2 A. I had an expectation of confidentiality.

3 Q. And did you have an expectation that the  
4 content of your call would not be shared with the  
5 actual account holder, Jaime Calzada?

01:55PM

6 MR. GREIFINGER: I'm going to renew my  
7 objection, vague, vague and ambiguous.

8 THE WITNESS: I never took that into  
9 consideration.

10 BY MR. MERRYMAN:

01:56PM

11 Q. You never thought about that. Is that your  
12 testimony?

13 A. Yes.

14 Q. And when you called Time Warner Cable on  
15 February 6, 2010, to order a pay-per-view UFC fight  
16 on Janice Wells-Lipton's account, did you have an  
17 expectation that the content of that conversation  
18 would be shared with Ms. Lipton?

01:56PM

19 MR. GREIFINGER: I'm going to renew my  
20 objection, vague and ambiguous.

01:56PM

21 THE WITNESS: Again, that was -- I never  
22 took that into consideration.

23 BY MR. MERRYMAN:

24 Q. You didn't think you were going to call and  
25 order a fight on Ms. Wells-Lipton's account and she

01:56PM

1 wouldn't find out about it, did you?

2 A. That was never taken into consideration as  
3 she was right next to me.

4 Q. Okay. So when you talked to Time Warner  
5 Cable on February 6, 2010, Ms. Wells-Lipton was  
6 present for your conversation with the company?

01:57PM

7 A. That is correct.

8 Q. And during your conversation with  
9 Ms. Wells-Lipton on February 6, 2010, she could hear  
10 the conversation?

01:57PM

11 MR. GREIFINGER: Calls for speculation,  
12 objection.

13 THE WITNESS: I don't know that.

14 BY MR. MERRYMAN:

15 Q. Well, during your convers- -- she was right  
16 next to you during the call; correct?

01:57PM

17 A. Correct.

18 Q. And was it your understanding, while you  
19 were having the conversation with Time Warner Cable  
20 on February 6, 2010, that Ms. Wells-Lipton could at  
21 least hear your end of the conversation with the  
22 company?

01:57PM

23 MR. GREIFINGER: Calls for speculation.

24 THE WITNESS: I believe she could hear my  
25 end of the conversation.

01:57PM



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1 A. Yes.

2 Q. Do you know anyone that has worked for Time  
3 Warner Cable at any time?

4 A. No.

5 Q. Are you aware of anyone that your brother 02:15PM  
6 knows who has worked at Time Warner Cable at any  
7 time?

8 A. No.

9 Q. Other than when you've called Time Warner  
10 Cable's toll-free number, have you spoken to anyone 02:15PM  
11 that works at Time Warner Cable?

12 A. No.

13 Q. Or that has worked at Time Warner Cable at  
14 any time?

15 A. No. 02:15PM

16 Q. Have you made any strategic decisions  
17 during the course of this litigation?

18 MR. GREIFINGER: Objection, vague,  
19 ambiguous.

20 THE WITNESS: No. 02:16PM

21 BY MR. MERRYMAN:

22 Q. Do you rely on your attorneys to make  
23 decisions regarding the litigation strategy in this  
24 case?

25 A. No. 02:16PM

1 Q. Who makes the litigation strategy decisions  
2 in this case?

3 MR. GREIFINGER: Objection, vague,  
4 ambiguous.

5 THE WITNESS: Yeah, can you specify as to 02:16PM  
6 what that means?

7 BY MR. MERRYMAN:

8 Q. For example, you testified earlier you're  
9 not aware of anything that's been filed with the  
10 court; is that correct? 02:16PM

11 A. That is correct.

12 Q. So who has made the decisions to file  
13 certain documents with the court if you haven't made  
14 them? Have your attorneys made those decisions?

15 MR. GREIFINGER: Objection, calls for 02:16PM  
16 speculation.

17 THE WITNESS: I don't know.

18 BY MR. MERRYMAN:

19 Q. Do you rely on your attorneys to keep you  
20 informed regarding the status of the litigation? 02:17PM

21 A. Yes.

22 Q. Do you rely on your attorneys to make  
23 decisions regarding litigation strategy?

24 MR. GREIFINGER: If you und- -- answer --  
25 if you don't understand the question, let him know. 02:17PM

1 THE WITNESS: Yeah, can you define  
2 "litigation strategy"?

3 BY MR. MERRYMAN:

4 Q. Well, do you rely on your attorneys to  
5 decide how best to pursue the case? 02:17PM

6 A. Again, I don't know what you mean by that.

7 Q. Well, do you rely on your attorneys to  
8 decide what to do next in the case?

9 A. Yes.

10 Q. And through today, have you relied on your 02:17PM  
11 attorneys to pursue the case in the most beneficial  
12 way possible for you and the proposed class?

13 A. I don't know what you mean by that.

14 Q. What have you done through today, other  
15 than your meeting yesterday and coming to this 02:18PM  
16 deposition, to proceed in this case in the best  
17 possible way for the proposed class?

18 A. I have -- that would be discussing what I  
19 spoke with my attorneys about; right?

20 MR. GREIFINGER: You're not to reveal 02:18PM  
21 attorney-client communication. If you've met with  
22 us, you can state that, but don't state the content  
23 of the meetings.

24 THE WITNESS: Just the facts of the case.

25 BY MR. MERRYMAN: 02:18PM

1 Q. So you gave your attorneys the facts  
2 regarding your claim against Time Warner Cable;  
3 correct?

4 A. Correct.

5 Q. And you met with your attorneys yesterday 02:19PM  
6 to prepare for today's deposition; correct?

7 A. Correct.

8 Q. And you have attended this deposition  
9 today; correct?

10 A. Correct. 02:19PM

11 Q. Other than those actions, what have you  
12 done to prosecute this case on behalf of the  
13 proposed class?

14 A. That's it.

15 Q. Other than those actions which you 02:19PM  
16 described a moment ago, have you relied on your  
17 attorneys to make decisions in moving the case  
18 forward on behalf of the proposed class?

19 A. Can you be more specific --

20 Q. Well --

21 A. -- as to what decisions?

22 Q. To the extent anything's happened in the  
23 case other than the three activities that you  
24 described a moment ago, have you relied on your  
25 attorneys to conduct those activities? 02:19PM

1 A. Yes.

2 Q. Directing your attention to Exhibit 1,  
3 which is in front of you.

4 MR. MERRYMAN: Let's mark as Exhibit 2 a  
5 document.

02:21PM

6 (Deposition Exhibit 2 was marked for  
7 identification.)

8 BY MR. MERRYMAN:

9 Q. Have you seen Exhibit 2 before today?

10 A. Yes.

02:21PM

11 Q. Is that your signature about halfway down  
12 on the right to the right of the name Miguel  
13 Calzada?

14 A. Yes.

15 Q. And did you sign the verification marked as  
16 Exhibit 2 yesterday on November 14, 2011?

02:21PM

17 A. Yes.

18 Q. And prior to signing the verification, did  
19 you review Exhibit 1, the supplemental responses to  
20 Defendant's first set of special interrogatories?

02:21PM

21 A. Correct.

22 Q. And did you review those interrogatories to  
23 confirm that the information in them was accurate,  
24 to the best of your knowledge?

25 A. Yes.

02:21PM

1 words "Miguel Calzada"?

2 A. Yes.

3 Q. Do you recall the differences, if any,  
4 between the responses to interrogatories and the  
5 supplemental responses to interrogatories?

02:25PM

6 A. Yes.

7 Q. What were the differences?

8 A. The responses were more vague, if I'm  
9 remembering correctly.

10 Q. What does that mean?

02:25PM

11 A. There was less information on the responses  
12 to interrogatories than the supplemental.

13 Q. In what respect was there less information?

14 A. I don't remember specifically.

15 Q. Can you remember anything at all that was  
16 different about the two interrogatory responses?

02:26PM

17 A. Specifically, no.

18 Q. Prior to yesterday, had you seen the  
19 complaint that was filed in this case?

20 A. I don't recall.

02:27PM

21 Q. Do you know how many complaints have been  
22 filed in this case?

23 A. No.

24 Q. Do you know whether an amended complaint  
25 has been filed in this case?

02:27PM

1 A. No.

2 Q. Did you review the complaint prior to its  
3 being filed in this case?

4 A. I don't know.

5 Q. Do you know what the complaint is? 02:27PM

6 A. I have a rough idea.

7 Q. What's a complaint?

8 A. The alleged -- is it like infractions? Or  
9 the alleged -- the events of the case and what rules  
10 may have been broken. 02:28PM

11 Q. Do you have an understanding that a  
12 complaint is one of the documents that's filed to  
13 start a case?

14 A. Yes.

15 Q. Did you review the complaint that was filed 02:28PM  
16 to start this case before it was filed?

17 A. Can you repeat that?

18 Q. Did you personally review the complaint  
19 that was filed to commence this case before the  
20 complaint was filed with the court? 02:29PM

21 A. I do not remember.

22 Q. Did you personally conduct any factual  
23 investigation with respect to the claims in the  
24 complaint prior to the filing of the complaint?

25 A. Can you be more specific? 02:29PM

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1 Q. Did you personally do anything to  
2 investigate whether or not Time Warner Cable gives  
3 notice that calls may be monitored or recorded prior  
4 to filing the complaint?

5 A. No.

02:30PM

6 Q. Mr. Calzada, I'm going to hand you a  
7 document that's been marked in the bottom right-hand  
8 corner with the numbers TWC 01995 through -1997.

9 I'm not going to mark this right now.

10 I would like to direct your attention to  
11 the second page, which is marked TWC 01996, and ask  
12 if you recognize the signature in the upper third of  
13 the page?

02:31PM

14 A. I do not.

15 Q. Would you recognize your brother Jaime  
16 Calzada's signature if you saw it?

02:31PM

17 A. I would not.

18 Q. So it's your testimony that you do not  
19 recognize the handwriting signature on  
20 page TWC 01996 --

02:32PM

21 MR. GREIFINGER: Objection, asked --  
22 BY MR. MERRYMAN:

23 Q. -- is that correct?

24 MR. GREIFINGER: Objection, asked and  
25 answered.

02:32PM



1 STATE OF CALIFORNIA ) ss:

2 COUNTY OF LOS ANGELES )

3  
4 I, JANICE SCHUTZMAN, C.S.R. No. 9509, do hereby  
5 certify:

6 That the foregoing deposition testimony was  
7 taken before me at the time and place therein set  
8 forth and at which time the witness was administered  
9 the oath;

10 That the testimony of the witness and all  
11 objections made by counsel at the time of the  
12 examination were recorded stenographically by me,  
13 and were thereafter transcribed under my direction  
14 and supervision, and that the foregoing pages  
15 contain a full, true and accurate record of all  
16 proceedings and testimony to the best of my skill  
17 and ability.

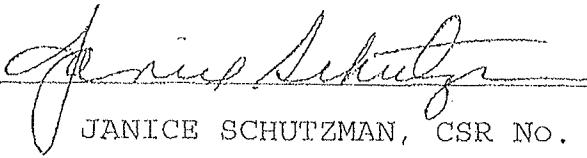
18 I further certify that I am neither counsel for  
19 any party to said action, nor am I related to any  
20 party to said action, nor am I in any way interested  
21 in the outcome thereof.

22 IN WITNESS WHEREOF, I have subscribed my name  
23 this 17th day of November, 2011.

24  
25  
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Veritext National Deposition & Litigation Services  
866 299-5127

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JANICE SCHUTZMAN, CSR No. 9509

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Veritext National Deposition & Litigation Services  
866 299-5127

# EXHIBIT R

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION  
3  
4 MIGUEL CALZADA, )  
5 )  
6 Plaintiff, )  
7 )  
8 vs. ) No. 2:11-cv-01701-DMG-JCG  
9 )  
10 TIME WARNER CABLE, LLC, )  
11 and DOES 1 through 100, )  
12 inclusive )  
13 )  
14 )  
15 Defendants. )  
16 )

17  
18 DEPOSITION OF MARTIN PRUNTY was taken on  
19 December 5, 2011, commencing at 11:14 a.m. at the law  
20 offices of Steptoe & Johnson, 201 East Washington Street,  
21 Suite 1600, Phoenix, Arizona, before YVONNE L. WHITEFIELD,  
22 a Certified Court Reporter in the State of Arizona.

23 COUNSEL APPEARING:  
24  
25

1 A. Yes.

2 Q. For how long have you been working with Avaya  
3 ACDs?

4 A. For as long as they've been around.

5 Q. How long is that?

12:42

6 A. I couldn't tell you exactly, but when I first  
7 started in -- they were still part of AT&T. So they've  
8 been through several iterations. But I've been working  
9 with them for a long time.

10 Q. What has been your experience with Avaya ACDs?

12:43

11 A. I think they're excellent products.

12 Q. Why do you consider yourself an expert in IVR  
13 systems?

14 A. Same reason as ACD. It's a very common  
15 technology in call centers and contact centers and I  
16 worked with them all the time.

12:43

17 Q. Is there any specific brands of IVR systems that  
18 you consider yourself to be an expert in?

19 A. No.

20 Q. Have you ever worked with a West Interactive IVR?

12:43

21 A. I know I answered that one. The answer is no.

22 Q. Do you have any familiarity with the West  
23 Interactive brand of IVR?

24 A. I've not worked with them.

25 Q. So you have not worked with West Interactive

12:44

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1 brands of IVR? The answer is no, you don't have any  
2 familiarity with them?

3 A. I'm aware that they have an offering, but I'm not  
4 familiar with the specifics of their offering.

5 Q. So is that a no?

12:44

6 A. That's a no.

7 Q. Do you consider yourself an expert in  
8 call-recording technology?

9 A. Yes.

10 Q. Why do you consider yourself an expert in  
11 call-recording technology?

12:45

12 A. Because I worked with a lot of it.

13 Q. When you say worked with a lot of it, what type  
14 of work have you done with call recording technologies?

15 A. I've done many call center consulting engagements  
16 for companies who use it and I have a strong understanding  
17 of how they use it, how it works, what it's capable of  
18 doing.

12:45

19 Q. Have you ever set up a call recording system for  
20 a company?

12:45

21 A. I'm not in the business of setting up call  
22 recording.

23 Q. I believe you testified earlier that you have  
24 experience with Witness brand of call-recording  
25 technology?

12:45

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1 A. Not in setting it up. Yes, I've worked with it.

2 Q. You've worked with it? What type of work have  
3 you done with Witness technology?

4 A. I worked with clients who used Witness  
5 technology. 12:46

6 Q. Have you ever yourself worked with Witness's  
7 system?

8 A. What do you mean by that?

9 Q. Have you ever had access to Witness's system to,  
10 for example, monitor a call? 12:46

11 MR. OZZELLO: Vague and ambiguous.

12 THE WITNESS: Yeah. I'm not sure I understand  
13 the question.

14 BY MS. FELDMAN:

15 Q. Other than working with a company who has 12:46  
16 Witness, what have you done specifically with regard to  
17 Witness technology?

18 MR. OZZELLO: Vague and ambiguous.

19 THE WITNESS: Yeah. When you say work with the  
20 technology, I work with the client to better utilize the 12:46  
21 technology. I don't program it; I don't --

22 MR. OZZELLO: There's no question pending.

23 THE WITNESS: Okay.

24 BY MS. FELDMAN:

25 Q. Have you ever used Witness to monitor a call 12:46

Page 58

1 that's been recorded?

2 MR. OZZELLO: Vague and ambiguous.

3 THE WITNESS: I don't use -- I don't monitor

4 calls.

5 BY MS. FELDMAN:

12:47

6 Q. Have you ever used Witness to search for a call  
7 that's been recorded?

8 A. No.

9 Q. Have you ever ran a test on a system to insure  
10 that Witness was working correctly?

12:47

11 A. No.

12 Q. In general, what has been your experience with  
13 the Witness technology?

14 MR. OZZELLO: Vague and ambiguous.

15 THE WITNESS: My exposure to it has been good.

12:47

16 BY MS. FELDMAN:

17 Q. Do you make recommendations to companies as to  
18 how to use the Witness technology?

19 A. Not specifically, no.

20 Q. What is your understanding as to how Witness  
21 works?

12:48

22 A. Witness is interconnected to the ACD system and  
23 it's preprogrammed to record some or all calls, incoming  
24 or outgoing. And it gives the user the ability to search  
25 on calls, to manage the quality for the agent, and to

12:48



1 that it does happen and reviewing, you know, testimony  
2 from the person most knowledgeable.

3 Q. In reviewing the trouble tickets and the other  
4 documents you just mentioned, did you find any evidence to  
5 support that Mr. Calzada did not receive notice his call 02:49  
6 was being recorded on February 6?

7 A. That wasn't my purpose.

8 Q. So is that a no?

9 A. That's a no.

10 Q. Did you find any evidence in reviewing documents 02:49  
11 for this case that Time Warner wasn't providing notice on  
12 more than one occasion?

13 MR. OZZELLO: Vague and ambiguous.

14 THE WITNESS: There's no way to describe that  
15 it's one occasion. It's very possible that on those 02:49  
16 numbers, in particular the VDNs that were shown, they may  
17 never have had a recorded message provided, recorded  
18 announcement.

19 BY MS. FELDMAN:

20 Q. When you say "very possible," what do you mean? 02:50

21 A. What I mean is that there are -- there were 26  
22 VDNs that do not have a -- were not -- were not providing  
23 callers with an announcement. That's 26 telephone numbers  
24 associated with that.

25 And what's not known is what caused that or how 02:50

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1 long it had been in place. In my view, the most likely  
2 possibility is they were never programmed properly to  
3 begin with.

4 Q. Why is it your view that is the most likely  
5 possibility? 02:50

6 A. Because it's unusual for somebody to go in and  
7 change vectors once they're established and to  
8 specifically remove a recorded announcement from those  
9 vectors.

10 Q. What evidence do you have to support that it was 02:50  
11 likely that those VDNs were never programmed to provide  
12 notice to callers that their call --

13 A. I don't have evidence for that, but I haven't  
14 seen any evidence that suggests anything else.

15 Q. I think a second ago, you said 26 VDNs refers to 02:51  
16 26 telephone numbers. Is it your opinion that each VDN,  
17 in other words -- strike that.

18 Would 888-TW-CABLE be one VDN?

19 A. Generally that's how it works.

20 Q. So then when you say -- 02:51

21 A. Could be a local or toll-free number.

22 Q. In your opinion, 26 VDN is 26 separate telephone  
23 numbers dialed by callers to reach Time Warner Cable?

24 A. Typically that's the way it works.

25 Q. We'll come back to this issue later. 02:51

1 A. Myself basically. I would say myself and the  
2 attorneys.

3 Q. What specific evidence do you believe clearly  
4 substantiates that all California callers to TWC did not  
5 receive notice that their calls may be recorded? 03:23

6 A. If you reference Exhibit B, this is excerpts from  
7 the trouble tickets and CR No. 766 and 771. 766 dated  
8 9-24, it's indicating "Insert pre-queue announcement onto  
9 VDNs in Pacific ACD-San Diego; customers will not" --  
10 "will continue to not hear the announcement; therefore, we 03:23  
11 are not in compliance."

12 And then under WOM notes, "pre-queue announcement  
13 informing callers of recorded calls is missing out of  
14 compliance."

15 Q. And how did this document clearly substantiate 03:24  
16 that all California callers to TWC were not receiving  
17 notice that their calls may be recorded or monitored?

18 A. It doesn't. It certainly proves that some were  
19 not.

20 Q. Other than this one example in Exhibit B, did you 03:24  
21 find any other evidence that TWC was not giving notice to  
22 callers that their calls might be recorded or monitored?

23 A. No.

24 Q. Paragraph 16 states "clearly substantiates its  
25 position that some or all California callers." 03:24



1 Q. Do you know --

2 A. That information is not available to me.

3 Q. Turning to Exhibit B of your expert report, did  
4 you prepare this document?

5 A. Let me catch up. You're referring to the 03:35  
6 excerpts? Yes, I did.

7 Q. Do you agree these excerpts are from a document  
8 produced by TWC Bates labeled TWC-019777 -- 1977. Sorry.

9 A. Yes.

10 Q. You agree that this is the data from CR No. 766 03:36  
11 and 771 which were rows 114 and 115 of that report?

12 A. Correct.

13 Q. Did you review TWC 1977 in its entirety?

14 A. I did.

15 Q. Do you know who created TWC 1977? 03:36

16 A. I would have to go back and look.

17 Q. Do you know how it was created?

18 A. I would have to go back and look.

19 Q. As you sit here today, do you know how TWC 1977  
20 was created? 03:36

21 A. It was created by your -- as I recall, it was  
22 something that was provided in discovery by your person  
23 most knowledgeable, Sagi Shimonovitz.

24 Q. Do you know the purpose of TWC 1977?

25 A. It's a spreadsheet that chronicled all trouble 03:37

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1 tickets relating to Avaya during the class period.

2 Q. How do you know this?

3 A. I believe that's what was said in testimony.

4 Q. By what was said in the testimony, which

5 testimony in the testimony?

03:37

6 A. Shimonovitz.

7 Q. Do you agree this data is from a tab on TWC 1977

8 entitled CM data?

9 A. Uh-huh.

10 Q. What does CM data mean?

03:37

11 A. I couldn't tell you off the top of my head.

12 Q. Do you agree that Exhibit B are just excerpts

13 from CR 766, 777 and that there are additional columns

14 that are not represented?

15 A. Absolutely. My intent in creating this was not

03:38

16 to try to duplicate the trouble ticket itself. It was

17 just to pull highlights out of it.

18 Q. How did you choose which columns to include in

19 this exhibit and which not to include?

20 A. I picked the ones that I thought were relevant to

03:38

21 the problem, described the problem and described what was

22 being done with it.

23 MS. FELDMAN: I would like to mark as Exhibit 2 a

24 diagram.

25 ///

03:39

1 (Deposition Exhibit Number 2 was marked for  
2 identification.)

3 BY MS. FELDMAN:

4 Q. Mr. Prunty, do you agree the document marked as  
5 Exhibit 2 contains the same data as Exhibit B to your 03:39  
6 declaration but also includes the columns you did not  
7 include in Exhibit B?

8 A. I would have to look at the original spreadsheet  
9 to verify that. It does include more columns.

10 Q. Do you have any reason to believe that this is 03:39  
11 not an accurate printout of rows 114 and 115 from TWC  
12 1977?

13 A. I don't. I just answered your question, though.

14 Q. Have you talked to anyone at Time Warner Cable to  
15 help interpret Time Warner Cable -- TWC 01977 for you? 03:39

16 A. No, I have not.

17 Q. Aside from what is listed in Exhibit B to your  
18 declaration and here in Exhibit 2, does Time Warner Cable  
19 1977, do you have any independent knowledge of the alleged  
20 issues identified as CR 766 and 771? 03:39

21 A. Could you ask that again, please?

22 Q. Is your knowledge of 766 and 771 limited to your  
23 interpretation of what is in this report?

24 A. Yes.

25 Q. In your opinion, what's the difference between 03:40

1 To what do you think validation date refers?

2 A. I couldn't tell you in this context.

3 Q. Could validation mean the date they validated  
4 that the test had been done and met?

5 A. I wouldn't conclude that.

03:58

6 Q. Is it possible that validation -- looking at this  
7 report, do you know how many callers allegedly did not  
8 receive notice that their calls were being recorded as a  
9 result of CR 766 and 771?

10 A. No, but that information is available.

03:58

11 Q. From looking at this report, can you tell how  
12 many callers were impacted by the alleged issue in 766 or  
13 771?

14 A. I just know that there was one.

15 Q. As you sit here today, do you know how many  
16 callers were allegedly impacted by the problems addressed  
17 in 766 and 771?

03:59

18 A. Of course not, but depending upon the telephone  
19 numbers assigned to the VDNs, it could be a large number.

20 Q. I believe you testified earlier that you don't  
21 know how many VDNs there were for San Diego callers; is  
22 that correct?

03:59

23 A. That's correct.

24 Q. Do you know how many total VDNs there were at the  
25 time for California callers?

03:59



1 approximately what percentage of calls relate to a billing  
2 issue?

3 A. There's no way to answer that.

4 Q. Have you ever done research to determine the  
5 percentage of calls that relate to different topics for a 04:01  
6 call center?

7 A. Yes.

8 Q. Have you ever done that research in the context  
9 of a cable company?

10 A. No. 04:01

11 Q. Moving on to the next paragraph, paragraph 18 of  
12 your report, on what do you base your opinion that the  
13 problems identified in CR 766 and 771 were eventually  
14 corrected on October 6, 2010?

15 A. The trouble ticket. 04:01

16 Q. How did the trouble ticket form your opinion that  
17 the issues identified in CR 766 and 771 were corrected on  
18 October 6, 2010?

19 A. By the entry date closed of 10-6-2010, which is  
20 the second to last column of CR 771. 04:02

21 Q. Do you know for certain that 10-6-2010 refers to  
22 the date that the issues in 766 and 771 were resolved?

23 A. I can tell you that in trouble-ticket reporting,  
24 that's what it would mean. But I can't imagine it meaning  
25 anything else. Let's put it that way. 04:03

1 Q. Is it possible that the date 10-6-2010 refers to  
2 the date the ticket was closed?

3 A. It's normally not how it's done.

4 Q. When you say normally not how it's done, are you  
5 referring to generally or to Time Warner Cable's practices 04:03  
6 for filling out trouble tickets?

7 A. Generally.

8 Q. Do you know whether in Time Warner Cable's  
9 practices for filling out trouble tickets "date close"  
10 refers to the date that the ticket is actually closed as 04:03  
11 opposed to the date that the change is made?

12 A. I do not know that.

13 Q. Do you agree that the date listed for both 766  
14 and 771 in the column change date is September 24, 2010?

15 A. I'm sorry. Repeat that, please. 04:03

16 Q. Looking to the column "change date." It's on the  
17 first page, the fifth column. Do you agree that the date  
18 listed there is September 24, 2010?

19 A. Yes.

20 Q. And at the very end of that page, do you agree 04:04  
21 that the review date listed in 766 and 771 is  
22 September 24, 2010?

23 A. Yes.

24 Q. Turning to the next page under "validation date,"  
25 do you agree that the validation date for both 766 and 771 04:04

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1 interpretation of that report is incorrect, do you have  
2 any evidence that Time Warner Cable did not give notice to  
3 callers that their calls might be recorded from January  
4 27, 2010 to the present?

5 MR. OZZELLO: Incomplete hypothetical.

04:09

6 THE WITNESS: It's a difficult question. The  
7 answer is probably no to your question.

8 BY MS. FELDMAN:

9 Q. Turning back to your report in the last sentence  
10 of paragraph 18, you say "Therefore, it is very likely  
11 that the problem existed for a much longer period than the  
12 13 days that transpired from the time the problem was  
13 first reported until it was resolved."

04:10

14 In that context, what is the magnitude of "very  
15 likely"?

04:10

16 MR. OZZELLO: Vague and ambiguous; asked and  
17 answered.

18 THE WITNESS: You waiting for a response?

19 BY MS. FELDMAN:

20 Q. Yes.

04:10

21 A. Why is it very likely? Essentially if you  
22 interpret -- if you evaluate the deposition of the person  
23 most knowledgeable who states categorically that there are  
24 no callers who do not get a message, a recorded  
25 announcement. Essentially I'm paraphrasing what he said,

04:11

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1 but that's essentially what he said.

2 And then you see this and you realize that there  
3 was no process in place to specifically to check to make  
4 sure that every call received that message, and when you  
5 realize that there's nothing that alarms or, you know,  
6 notifies people that there is -- the recorded message is  
7 working, they have to find it out themselves.

04:11

8 My belief is that the likelihood is it happened  
9 much earlier than 9-24, but that's the date that they  
10 found it or they discovered it.

04:12

11 That's my speculation.

12 Q. That's your speculation based on your review of  
13 this single report, correct?

14 A. And the testimony of the person most  
15 knowledgeable.

04:12

16 Q. Is there anything in this report to indicate that  
17 callers in Los Angeles were not receiving notice that  
18 their calls might be recorded on May 27, 2009?

19 MR. OZZELLO: Which report?

20 MS. FELDMAN: 1977.

04:12

21 MR. OZZELLO: Vague and ambiguous.

22 BY MS. FELDMAN:

23 Q. Is there anything in TWC 1977 to indicate that  
24 callers in Los Angeles were not receiving notice that  
25 there calls might be recorded on May 27, 2009?

04:12

1 A. Yes.

2 Q. Turning to page or paragraph 23 of your  
3 declaration, on what do you base your opinion that it is  
4 very likely that other local or toll-free numbers do not  
5 receive the required pre-recorded announcement?

04:38

6 A. I concluded from my evaluation of the deposition  
7 of Sagi Shimonovitz that there didn't seem to be a process  
8 in place for checking specifically for messages -- for  
9 these recorded announcements.

10 And, therefore, I felt that being in the position  
11 that he was and taking the position that he did, that  
12 there were none, and finding them led me to believe that  
13 it would be worthwhile to look at the others to see if  
14 there were others like that.

04:38

15 Q. Have you come across a specific toll-free number  
16 that you contend does not give callers notice that their  
17 calls might be recorded or monitored?

04:38

18 A. No. No, I have not.

19 Q. Do you know any toll-free number or local number  
20 during the class period that callers called and did not  
21 receive notice that their calls might be monitored or  
22 recorded?

04:39

23 A. Not with the information I have available, no.

24 Q. Paragraph 24 of your declaration, you state that  
25 there is a method that exists to identify the specific

04:39

1 class-wide basis?

2 MR. OZZELLO: Asked and answered.

3 THE WITNESS: I would have to decide. I don't  
4 have any idea at this point how many calls are involved in  
5 this because we don't have that information.

05:00

6 BY MS. FELDMAN:

7 Q. Would you agree that you would have to track that  
8 on a call-by-call basis?

9 A. No, I wouldn't.

10 Q. As you sit here today, you don't know how you  
11 would track that on a class-wide basis?

05:00

12 A. I don't think I have enough information to do  
13 that. I think there are ways it can be done without going  
14 call-by-call, however. I would have to decide how that  
15 happens.

05:00

16 Q. Do you know whether TWC has technology in place  
17 that would let you do that on a class-wide basis?

18 A. I don't.

19 Q. Turning to paragraph 27 of your declaration, have  
20 you ever used the Verint ContactStore for Communications  
21 Manager?

05:01

22 A. I would have no reason to.

23 Q. Have you ever used the bulk-search capabilities  
24 on Verint?

25 A. No, I have not.

05:01

1 Q. Have you ever conducted a search on Verint for a  
2 specific VDN?

3 A. No, I have not.

4 Q. Aside from your review of the Verint guide that  
5 you referenced in this paragraph, have you conducted any 05:01  
6 test of TWC's system to determine whether Verint is  
7 searchable by VDN?

8 A. No, I have not.

9 Q. Aside from your review of the Verint guide  
10 referenced in this paragraph, did you conduct any test of 05:02  
11 TWC's system to determine whether Verint is searchable by  
12 calls that are answered without receiving a recorded  
13 announcement?

14 A. No.

15 Q. Aside from your review of the Verint 05:02  
16 administrative guide, what is the basis for your opinion  
17 in paragraph 27?

18 A. The Verint ContactStore for Communications  
19 Manager manual is what I relied upon, and it states  
20 specifically that is something that could be done. 05:03

21 Q. Is there anything else that you relied on for  
22 your opinion in paragraph 27 other than the manual?

23 A. No.

24 Q. Paragraph 29, you reference an internal TWC  
25 e-mail. To what e-mail are you referring? 05:03

1           A.    I'm trying to recall whether I had seen the  
2   e-mail or whether I was -- I had discussed this with one  
3   of the plaintiff attorneys. There evidently was an  
4   internal TWC e-mail and I don't know that I had a copy of  
5   it myself that referenced to TWC's practice of recording       05:04  
6   both incoming and outgoing calls.

7           It might have also been -- it might either have  
8   been in that context or from the Shimonovitz deposition.  
9   I don't recall.

10          Q.    Aside from learning about this e-mail, what other       05:04  
11   evidence did you consider concerning Time Warner Cable's  
12   outgoing call recording policies?

13          A.    I had none.

14          Q.    Do you know generally what TWC's policy is for  
15   recording outgoing calls?                                       05:04

16          A.    No, I do not.

17          Q.    Do you know what technology TWC uses to allegedly  
18   record outgoing calls?

19          A.    I don't know specifically. In all likelihood,  
20   it's the same Verint system or Witness system. It also       05:05  
21   depends on whether it's one of the outsourcers or not  
22   because they're using different systems.

23          Q.    So as you sit here today, you don't know one way  
24   or the other which technology TWC uses to allegedly record  
25   calls?   05:05



1 their call was being recorded?

2 MR. OZZELLO: Asked and answered.

3 THE WITNESS: Yeah. No, I haven't.

4 BY MS. FELDMAN:

5 Q. Are you aware of anybody who received a call from 05:06  
6 Time Warner Cable but did not receive notice that their  
7 call was being recorded?

8 A. No, I've not.

9 Q. What steps have you taken to test or review Time  
10 Warner Cable's outgoing-call policies? 05:07

11 A. I have not.

12 Q. Turning to paragraph 33 of your declaration, on  
13 what do you base your opinion that Time Warner's outgoing  
14 calls are typically stored and archived -- strike that.

15 On what do you base your opinion that calls are 05:08  
16 typically stored or archived on a server?

17 A. That's normally how it works.

18 Q. Do you know TWC's policies for storing or  
19 archiving outgoing-call recordings?

20 A. I didn't say that. I said they typically are. 05:08

21 Q. Do you know specifically Time Warner Cable's  
22 policy for storing or archiving outgoing-call recordings?

23 A. I do not.

24 Q. Do you know whether Time Warner Cable records  
25 outgoing calls individually? 05:08

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1 A. I do not.

2 Q. Do you know in what format Time Warner Cable  
3 stores outgoing calls?

4 A. I'm not sure I understand what you mean.

5 Q. Do you know in what file format Time Warner Cable 05:08  
6 stores outgoing calls?

7 A. I don't. It would be one of several, but I don't  
8 know specifically.

9 Q. Do you know what technology Time Warner Cable  
10 uses to store outgoing-call recordings? 05:09

11 A. No, I do not.

12 Q. Do you agree that the only way to determine  
13 whether Time Warner Cable gave notice to a specific caller  
14 that has called was recorded or monitored would be to  
15 record or -- would be to review the call recording for 05:09  
16 that specific call?

17 A. Please restate that.

18 MR. OZZELLO: Asked and answered.

19 BY MS. FELDMAN:

20 Q. Do you know of a methodology by which to identify 05:09  
21 on a class-wide basis California residents whose calls are  
22 recorded but who did not receive notice between January  
23 27, 2010 and the present for outgoing calls?

24 A. It is possible, and I don't know the answer to  
25 this specifically, but if some of the recording systems 05:09

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1 Based on your review of TWC 1977 to date, or your  
2 review of any document in this case, aside from the  
3 situation in TWC -- CR 766 and 771, have you found any  
4 other examples that Time Warner Cable was not providing  
5 notice to callers that their calls may be monitored or  
6 recorded?

05:20

7 MR. OZZELLO: Lacks foundation; vague and  
8 ambiguous.

9 THE WITNESS: The qualifying point being of what  
10 I have looked at, which is only a portion of the document,  
11 I have not, but I'm not going to suggest that I searched  
12 the entire document and found none because I didn't do  
13 that.

05:20

14 BY MS. FELDMAN:

15 Q. You've opined here that there is a significant  
16 gap between the defendant's assertion that every caller  
17 receives a recording notification message and the actual  
18 reality. Is that determination based solely on  
19 Mr. Shimonovitz' deposition and what you located in 766  
20 and 771?

05:20

05:20

21 A. Absolutely. Yeah.

22 Q. In your opinion does the error -- strike that.

23 Moving to paragraph 32, you testify that it's  
24 highly likely that full compliance with the requirement to  
25 provide notice of recording does not occur with outgoing

05:21

1 calls.

2 On what do you base that opinion?

3 MR. OZZELLO: Asked and answered.

4 THE WITNESS: Yeah. In most cases, it's done

5 manually, verbally. And that's not nearly as easy to 05:21

6 manage as the incoming call.

7 BY MS. FELDMAN:

8 Q. Have you seen any specific evidence to indicate

9 that Time Warner Cable is not giving notice on outbound

10 calls that calls might be recorded or monitored? 05:21

11 A. Not based on what I've reviewed.

12 Q. Then on what do you base your opinion?

13 Mr. Prunty, we discussed earlier your proposed method for

14 identifying callers who contacted TWC and did not receive

15 notice that their call was being recorded. 05:23

16 How would you identify callers who allegedly did

17 not receive such notice and then were transferred to an

18 outside vendor; how would you determine whether their

19 calls were recorded?

20 MR. OZZELLO: Incomplete hypothetical. 05:23

21 THE WITNESS: There's lots of different ways.

22 Let me make sure I understand your question. If the call

23 came into TWC and then was routed to an outsourcer?

24 BY MS. FELDMAN:

25 Q. If a caller contacted Time Warner Cable, did not 05:23

1 I HEREBY CERTIFY that the foregoing deposition  
2 was taken by me pursuant to Notice; that I was then and  
3 there a Certified Court Reporter for the State of Arizona,  
4 and by virtue thereof authorized to administer an oath;  
5 that the witness before testifying was duly sworn by me to  
6 testify to the whole truth and nothing but the truth;  
7 pursuant to request, notification was provided that the  
8 deposition is available for review and signature; that the  
9 questions propounded by counsel and the answers of the  
10 witness thereto were taken down by me in shorthand and  
11 thereafter transcribed through computer-aided  
12 transcription under my direction, and that the foregoing  
13 typewritten pages contain a full, true, and accurate  
14 transcript of all proceedings had upon the taking of said  
15 deposition, all done to the best of my skill and ability.

16 I FURTHER CERTIFY that I am in no way related to  
17 nor employed by any of the parties hereto, nor am I in any  
18 way interested in the outcome hereof.

19 DATED at Phoenix, Arizona, this 7th day of  
20 December, 2011.

21  
22  
23  
24 YVONNE WHITEFIELD  
25 Certified Court Reporter  
Certificate No. 50611

December 10, 2011

Via U.S. Mail & E-mail  
*bmerryman@whitecase.com*

Bryan A Merryman, Esq.  
**WHITE & CASE, LLP**  
633 West 5th Street, Suite 1900  
Los Angeles, California 90071-2007

**Re: Calzada v. Time Warner Cable LLC**

Dear Mr. Merryman:

Enclosed please find Martin Prunty's signed page of his deposition transcript taken on December 5, 2011. Mr. Prunty's changes to his deposition transcript are as follows:

<u>Page</u>	<u>Line</u>	<u>Change:</u>
108	24	VDNs are normally associated with incoming local or toll-free telephone numbers. They are also used to route callers from an IVR to a vector in the ACD system.
122	6-18	First, I would conduct a search of the VDNs identified in CR# 771 in spreadsheet document 1977 using the Verint call recording system. Then, I would conduct a review of all Avaya vectors to determine if call recording announcements were given in every case. If I discovered vectors that excluded call recordings, I would conduct a search of the VDNs associated with the vectors using the Verint system.
129	14	No, I reviewed it long enough to discover CR#766 and 771.
162	21	I don't, but their technology is capable of capturing this data and it is highly-likely that they do.
162-163	25-2	It is very unlikely that TWC does not capture this data. However, I do not know how they would capture it in

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Page 2

response to your hypothetical question.

- |         |       |  |
|---------|-------|--|
| 167     | 15-17 | Yes. The Verint call recording system captures both the VDN and the telephone number of the caller for each recorded call. It is also capable of capturing the name of the caller for both toll-free and local numbers. It captures the date and time of each call. By knowing which VDN was used, you can also easily track whether the vector associated with it was providing the announcement notifying callers that their call would be recorded, or not. Using the "Bulk Search and Replay" capabilities of the Verint system, each of the appropriate calls, and the information regarding the identity of who placed them, can easily be identified. |
| 174     | 3-5   | As I had previously described, the Verint call recording system can be used to search to find all calls during the class period that used a specific VDN, a vector that did not include a recorded announcement and the telephone number of each of the callers.   |
| 174     | 12-15 | The Verint call recording system can be used to search to find all calls during the class period that used a specific VDN, a vector that did not include a recorded announcement and the telephone number of each of the callers.  |
| 179-180 | 24-3  | Yes, an effective method for identifying outbound callers who did not receive a notice of recording would be to utilize forensic audio search technology, which is capable of identifying the presence or absence of words such as "this call may be recorded" in a batch of audio files. Forensic audio search technology can be used to determine whether some or all of the outgoing call recording files contained key words used to provide notification that a call may be recorded.   |
| 180     | 9-17  | I am referring to forensic audio search technology. Forensic audio search technology can be used to determine whether some or all of the outgoing call recording files contained key words used to provide notification that a call  |

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Page 3

may be recorded.

- |     |       |   |
|-----|-------|---|
| 180 | 21-22 | All outgoing audio files for the class period can be searched using forensic audio search technology for the period of the class action. A third-party forensic audio search vendor can be retained to conduct the search and can access TWC audio files remotely.  |
| 181 | 10-16 | I was only proposing to take a sample as a means of determining whether all outgoing callers were receiving consistent notification that calls are recorded. In order to establish the impact on a class-wide basis, it will be necessary to conduct a forensic audio search on all outgoing calls.   |
| 183 | 5-9   | I would be able to search all calls by using forensic audio search technology. By entering key words, such as "recorded," this technology will identify every outgoing audio file where that word exists, or it may identify every audio file where that term does not exist. Forensic audio search technology will simply the effort to identify class members relating to outgoing calls. |
| 183 | 16-18 | There are several options available, but Nexidia's Audio Discovery on Demand would serve as an example.   |
| 189 | 8-9   | To make this determination, you would need to review the outside vendor's VDNs and vectors to determine whether or not a recorded message is given. If it is determined that the vendor is not providing an a recording announcement, the vendor's recording system can be searched to find the appropriate calls in the same way as it happens with TWC's system.                          |
| 189 | 15-18 | Yes, it is essentially the same methodology that we used to determine TWC's failure to do so.   |
| 189 | 25    | Yes, we would use the same methodology we have used with TWC.   |
| 196 | 16-17 | Another way to identify Mr. Calzada would be from the   |



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recording itself. There may be other ways to identify Mr. Calzada in this instance. However, more discovery of the TWC technology and customer database is necessary to make that determination.

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Mr. Calzada's cell phone number would be captured by the Avaya system and would also be stored as part of the recording database in the Verint recording system.

Should you have any questions, please do not hesitate to contact our office at your earliest convenience.

Very truly yours,

ARIAS OZZELLO & GIGNAC LLP

ASHLEY HART

1 THE VIDEOGRAPHER: This concludes the  
2 deposition --

3 MS. FELDMAN: Can we go off the record?

4 THE VIDEOGRAPHER: Yes. Certainly. Off the  
5 record at 5:59.

05:59

6 (Recess taken.)

7 THE VIDEOGRAPHER: This concludes the deposition  
8 of Martin Prunty. Off the record at 6:03.

9 MS. FELDMAN: We're going to stipulate to relieve  
10 you of the duties under federal rules. Mr. Prunty has 06:03  
11 agreed to provide -- review his deposition and provide  
12 comments to his counsel by Friday. And Mr. Ozzello has  
13 agreed to provide us by noon on Saturday any changes  
14 Mr. Prunty has and a signed deposition.

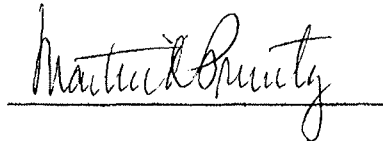
15 MR. OZZELLO: So agreed. 06:04

16 (Whereupon, the deposition concluded at  
17 6:04 p.m.)

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MARTIN PRUNTY

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